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Floor Debate
March 15, 2007

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LR58]

SENATOR LANGEMEIER PRESIDING []

SENATOR LANGEMEIER: Good morning, ladies and gentlemen. Welcome to the George Norris Legislative Chamber for the forty-seventh day of the One Hundredth Legislature, First Session. Our chaplain today will be Senator Kruse. Please rise. []

SENATOR KRUSE: (Prayer offered.) []

SENATOR LANGEMEIER: Thank you, Senator Kruse. I call to order the forty-seventh day of the One Hundredth Legislature, First Session. Senators, please record your presence. Mr. Clerk, please record. []

CLERK: I have a quorum present, Mr. President. []

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Are there any corrections for the Journal? []

CLERK: I have no corrections, Mr. President. []

SENATOR LANGEMEIER: Thank you. Are there any messages, reports, or announcements? []

CLERK: Mr. President, communication from the Governor. "Engrossed LB185 was received in my office on March 8. I signed this bill and delivered it to the Secretary of State on March 14, 2007. Sincerely, Dave Heineman, Governor." []

Mr. President, an appointment letter from the Governor, or a withdrawal of an appointment, I should say; the withdrawal of the appointment of Alan Smith to the Community Corrections Council. Two reports received in the Clerk's Office, available for member review, on file in the Clerk's Office to be acknowledged. And lobby report for this week to be inserted in the Journal. That's all that I had, Mr. President. (Legislative Journal pages 875-876.) []

SENATOR LANGEMEIER: Thank you, Mr. Clerk. We will now proceed to the first item on the agenda. Mr. Clerk, LB663. [LB663]

CLERK: Mr. President, LB663 is a bill originally offered by Senator Hudkins, briefly discussed yesterday. At this time, Mr. President, I have a priority motion. Senator

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Hudkins would ask unanimous consent to bracket the bill until April 18, 2007. [LB663]

SENATOR LANGEMEIER: You have heard the motion for unanimous consent to bracket LB663 until 4-18-07. Do I see any objections? Seeing no objections, it is bracketed. Mr. Clerk, next item on the agenda. [LB663]

CLERK: Mr. President, the next bill is LB328. It's a bill offered by the Retirement Systems Committee. (Read title of LB328.) The bill was introduced on January 11 of this year, at that time it was referred to the Nebraska Retirement Systems Committee for public hearing. The bill was advanced to General File, Mr. President. There are committee amendments pending. (AM391, Legislative Journal page 596.) [LB328]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Synowiecki, you are recognized as Chair to open on LB328. [LB328]

SENATOR SYNOWIECKI: Thank you, Senator Langemeier. Good morning, members. We bring LB328 for your consideration. It's a Retirement Committee bill to change provisions relating to county and state retirement plans. The committee introduced this bill at the request of the Nebraska Public Employees Retirement Systems. LB328 had a hearing on February 1, 2007. There was no opposition testimony and the bill was advanced 6-0 to General File with a committee amendment, AM391. LB328 would create separate expense funds for the County Employees Defined Contribution Retirement System, the County Employees Cash Balance Retirement System, the State Employees Defined Contribution Retirement System, and the State Employees Cash Balance Retirement System. Currently, Nebraska Public Employees Retirement Systems utilizes a subaccount within the current County Employees Retirement System Expense Fund for administrative expenses related to the County Employees Cash Balance Retirement System and a subaccount within the current State Employees Retirement System Expense Fund for administrative expenses related to the State Employees Cash Balance Retirement System. This bill would give the Retirement System the statutory authority to maintain separate accounts for administrative expenses for these plans. In addition, LB328 would provide for the immediate reenrollment in the county and state retirement systems of members who have ceased employment and return to employment prior to a five-year break in service. Current statute provides for a 60-day period of employment before reenrollment in the county and state retirement systems is required. This provision was overlooked last session with the passage of LB366, which required new employees to immediately enroll and participate in the county and state retirement plans. With the passage of LB328, all county and state employees will be required to immediately enroll and participate in their respective retirement systems upon employment. I want to thank you, members, for your consideration of LB328. [LB328]

SENATOR LANGEMEIER: Thank you, Senator Synowiecki. As the Clerk has stated,

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there are amendments from the Nebraska Retirement Systems Committee. Senator Synowiecki, as Chair of that committee, you're recognized to open on the committee amendments. [LB328]

SENATOR SYNOWIECKI: Thank you, Senator Langemeier. AM391 incorporates two retirement legislative bills, LB370 and LB665, into LB328. These bills relate to the duties and functions of the Nebraska Public Employees Retirement Systems. LB370 was introduced by Senator Erdman. The bill had a hearing on February 5, 2007. There was no opposition at the hearing and the bill was advanced to General File with an amendment on a 5-0 vote. The provisions of LB370, included in this amendment, facilitate the gathering of information required to perform an actuarial study to determine the costs of implementing a defined benefit plan for local law enforcement officers. Under the legislation, the Nebraska Retirement Systems will conduct a survey of current retirement plans in place for law enforcement officers and issue a report to the Nebraska Retirement Systems Committee no later than October 1, 2007. The report also will be provided to any firm employed to conduct an actuarial survey. LB370 states that neither the state nor any political subdivisions will be responsible for payment of the actuarial survey. AM391 also contains provisions of LB665, which was introduced by Senator Karpisek. LB665 had a hearing on February 1, 2007. There were three proponent testifiers and no opponent testimony. It was advanced to General File on a 6-0 vote. Pursuant to the April 2002 passage of LB687, which added the cash balance benefit option for state and county employees, LB665 provides that those employees who remain with a defined contribution benefit be given a further opportunity to enroll in the cash balance benefit option. Members who begin participation in the state employees retirement plan after January 1, 2003, participate in the cash balance benefit only. The cash balance benefit is considered a hybrid of defined benefit and defined contribution plans. In the cash balance plan, there is a guaranteed 5 percent minimum rate of return on investments. This offers more security than the defined contribution plan. However, the cash balance investments are not self-directed and offer less potential for investment growth. The amendment would allow another opportunity for county and state employees to elect to participate in the cash balance benefit. The one and only previous plan election period was in the fall of 2002. And as members are aware, 2002 was not a good year for investments. Eleven of the 14 fund options for the defined contribution plan members experienced a loss in 2002. Some of these funds experienced losses of over 20 percent in that year. To transfer to the cash balance plan in 2002, plan members would have had to sell their investments at the worst possible time and violate accepted principles of prudent investing. I want to thank members of the Legislature for your consideration for both LB328 and the amendment to that bill, AM391. [LB328 LB370 LB665]

SENATOR LANGEMEIER: Thank you, Senator Synowiecki. Mr. Clerk. [LB328]

CLERK: Mr. President, Senator Synowiecki would move to amend the committee

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amendments with AM479. (Legislative Journal page 798.) [LB328]

SENATOR LANGEMEIER: Senator Synowiecki, you are recognized to open on your amendment, AM479, to the committee amendments. [LB328]

SENATOR SYNOWIECKI: Thank you, Senator Langemeier. This is an amendment to the committee amendment that provides members who elect to participate in the cash balance benefit on or after November 1, 2007, but before January 1, 2008, and that they shall commence participation in the cash balance benefit on January 1, 2008. This kind of technical amendment is offered at the request of the Retirement Systems and will make AM391 easier to administer. Thank you. [LB328]

SENATOR LANGEMEIER: Thank you, Senator Synowiecki. You have heard the opening on AM479 to the committee amendments. The floor is now open for discussion. Senator Gay, you are recognized to address AM479. [LB328]

SENATOR GAY: Thank you, Mr. President. If Senator Synowiecki would yield to a question. [LB328]

SENATOR LANGEMEIER: Senator Synowiecki, would you yield to a question? [LB328]

SENATOR SYNOWIECKI: Yes, Senator Gay. [LB328]

SENATOR GAY: Thank you. On this enrollment option, I think it's a great option there. How long do the employees get to go to the cash balance plan? How long is that enrollment period? Is it for a year? [LB328]

SENATOR SYNOWIECKI: I believe it's from November to January, 2007; from November to January, 2007. [LB328]

SENATOR GAY: And then will there be statements sent out during the pension, when they're out there they will be promoting this? Because I think it is a very good option for some people. [LB328]

SENATOR SYNOWIECKI: Senator Gay, I believe, just like it was done in 2002, they'll send notice to all the members. [LB328]

SENATOR GAY: Okay. [LB328]

SENATOR SYNOWIECKI: I would assume so. [LB328]

SENATOR GAY: All right. I want to commend the committee on that particular...I think that's a good option for people. The rate has been, as you say, can't go lower than 5

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percent. That's a pretty good deal and it's been actually higher than that, I've seen. So I'd commend the committee for that particular move there. [LB328]

SENATOR SYNOWIECKI: I appreciate that, Senator Gay, but I might add that the bill was brought to the committee by Senator Karpisek. [LB328]

SENATOR GAY: Well, I commend Senator Karpisek on that. I think that's a good choice, especially when the options to make that decision weren't very good at that time. And I think it's commendable that you did that. But thank you. [LB328]

SENATOR LANGEMEIER: Thank you, Senator Gay. Is there anyone else wishing to speak to AM479? Seeing no lights on, Senator Synowiecki, you are recognized to close. He waives closing. The question before the body is, shall AM479 be adopted? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB328]

CLERK: 30 ayes, 0 nays, Mr. President, on adoption of Senator Synowiecki's amendment to the committee amendments. [LB328]

SENATOR LANGEMEIER: The amendment is adopted. We return now to the committee amendments, AM391. Is there anyone wishing to speak to the committee amendments? Seeing no lights on, Senator Synowiecki is recognized to close. He waives closing. The question before the body, shall the committee amendments, AM391, be adopted to LB328? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB328]

CLERK: 35 ayes, 0 nays, Mr. President, on the adoption of the committee amendments. [LB328]

SENATOR LANGEMEIER: The committee amendments are adopted. We return now to discussion on LB328, the bill itself. Is there anyone wishing to speak to the bill? Seeing no lights on, Senator Synowiecki, you are recognized to close. Senator Synowiecki waives closing. The question before the body is, shall LB328 advance to E&R Initial? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB328]

CLERK: 37 ayes, 0 nays, Mr. President, on the advancement of LB328. [LB328]

SENATOR LANGEMEIER: LB328 does advance. (Visitors introduced.) Mr. Clerk, next item on the agenda, LB160. [LB328 LB160]

CLERK: LB160, Mr. President, introduced by Senator Cornett. (Read title of LB160.) The bill was introduced on January 8 of this year, at that time referred to the Urban

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Affairs Committee. The bill was advanced to General File. I do have committee amendments pending, Mr. President. (AM503, Legislative Journal page 676.) [LB160]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Cornett, you are recognized to open on LB160. [LB160]

SENATOR CORNETT: Good morning, Mr. President and members of the body. Every year, quality fire equipment--including hoses, protective clothing, and breathing apparatus--worth thousands of dollars are discarded or placed in storage instead of being donated to volunteer fire departments in order to avoid civil liability lawsuits. The fear of litigation has forced some better equipped fire departments to waste surplus equipment which still can be used. Some large fire departments are still able to replace their equipment that is in good usable condition. The discarded fire control and rescue equipment could be donated to smaller fire departments and rescue squad companies. However, at times the used equipment is not donated because fear of civil liability lawsuits for passing on used equipment. The fear of litigation has forced wealthier fire departments to store old equipment in fire stations so that it is not reused. There have also been instances where the equipment is donated in a secret fashion and anonymously dropped off at a specific location for pickup by another fire department. I have specific examples of this. Fire departments that wish to donate equipment will send out a notice that they are throwing equipment away and send that notice to all the smaller departments. So then they'll come and dive through the dumpsters, basically, for this equipment because there are such underequipped fire departments in the state. This equipment could be donated to smaller volunteer fire departments which desperately need the equipment. Some of Nebraska volunteer fire and emergency medical departments operate on a shoestring budget which go to cover operating expenses of insurance and fuel, with little or no funding available for replacement of equipment. LB160 would allow a person--the committee amendment will address the extending scope of the word "person"--to donate equipment to a volunteer fire department or political subdivision for use by its volunteer fire department without being held liable for civil damages for personal injuries, property damage, or loss or death caused by the fire control or rescue equipment after the donation. The bill does not protect those persons that donate equipment if injury, damage, loss, or death is caused by the donor's negligent...intentional or reckless conduct or gross negligence, nor does it protect a vendor or manufacturer of the donated equipment. The protection would not extend to a vendor or manufacturer of fire control or rescue equipment. This type of legislation was initiated in Texas during the mid-1990's and since then has been adopted by several other states, including nearby Kansas and Missouri. Other states have also adopted this protection; including Arkansas in 2003, Arizona in 1999, Florida and Illinois in 2003, Indiana in 2001, and New York in 2003. In addition to providing limited civil immunity for donating fire or control equipment, the bill also amends Section 35-801. Presently, Section 35-801 restricts a person from knowingly transferring, selling, or offering for sale any fire department or firefighter of any item of clothing or

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equipment used in fire protection unless the clothing or equipment meets or exceeds the minimum standards established for the item or clothing, equipment by the National Fire Protection Association at the time of transfer, sale, or offer of sale. Existing law also prohibits a fire department from knowingly purchasing or a firefighter from knowingly accepting clothing or equipment unless it meets the minimum standard established by the National Fire Protection Association in effect at the time of purchase or acceptance. Section 35-801 is amended so that the restrictions found in the statute will only apply to vendors or manufacturers. The amendments to the statutes are intended to harmonize the provisions included in Section 1 of this bill. Thank you. [LB160]

SENATOR LANGEMEIER: Thank you, Senator Cornett. As the Clerk has stated, there are committee amendments from the Urban Affairs Committee. Senator Friend, as Chair of the Urban Affairs Committee, you are recognized to open on the committee amendments. [LB160]

SENATOR FRIEND: Thank you, Mr. President and members of the Legislature. The committee amendment to LB160 does one thing. The use of the term "person" in a statute is generally understood to mean more than simply human beings, if you will. In a statute, the term extends to include other legal entities; corporations, etcetera. To avoid any confusion, the committee believed that a further explanation of the term might be advisable since some of the primary donors under a statute would be other fire departments. And fire department is a defined term in the statute. Therefore, the committee statement adds a definition of "person" to the act that lists the full broad range of organizations, entities, and bodies, as well as fire departments and human beings who would be protected donors under the statute. Specifically, subsection C is added. "Person means any individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, fire department, public corporation, other legal or commercial entity, or governmental subdivision, agency, or instrumentality." That's all the amendment does. I would be happy to answer any questions in regard to the Urban Affairs amendment. I would ask for then the adoption of AM503 and the advancement of LB160. Thank you, Mr. President. [LB160]

SENATOR LANGEMEIER: You have heard the...thank you, Senator Friend. You have heard the opening on AM503, the Urban Affairs Committee amendment to LB160. The floor is open for discussion. Senator Lathrop, you are recognized to address AM503. [LB160]

SENATOR LATHROP: Thank you, Mr. President and colleagues. I'm on the Urban Affairs Committee and voted to bring this to General File. I think generally you will hear me talk about and address attempts to change civil liability. I think civil liability and the rules that we have with respect to negligence and holding people accountable for their carelessness, there is good public policy behind our tort system. When we have a bill before us as we do today, it is an exception to general tort principles and I think there

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are circumstances where that's appropriate. Typically it happens where someone is volunteering, where they're offering something for nothing as is happening here. We have an opportunity to...presently, and we heard this testimony, presently there are fire departments that are literally taking their equipment out and throwing it away or mothballing it rather than giving it to other rural volunteer fire departments who could use it to fight fires in primarily rural parts of the state. The exception to general tort principles carved out by this statute are reasonable. In order for someone to be responsible for equipment that's donated from one fire department to another, they'd have to be grossly negligent. And gross negligence, for those of you who are interested, would be great or excessive negligence and that which indicates the absence of even slight care in the performance of a duty. And that's different than ordinary negligence and a higher standard. So we are providing protection to those who donate this equipment. There is also liability for intentional or reckless conduct. And I'd like to give a definition so that our legislative history reflects our intention here today. Intentional or reckless conduct is that conduct where one acts with actual knowledge that a danger exists and that person nevertheless intentionally fails to act to prevent the harm which was reasonably likely to result. With those definitions, I think the amendment to LB160 should be adopted by this body, as LB160 should as well. Thank you. [LB160]

SENATOR LANGEMEIER: Thank you, Senator Lathrop. Senator Carlson, you are recognized. [LB160]

SENATOR CARLSON: Mr. President, members of the Legislature, I rise in support of LB160, thank Senator Cornett for bringing it forward, and also in support of AM503. I believe, again, this is good public policy and we strive to support those bills that really are win-win situations. This is a good example of using assets that still have some good life in them. I believe it encourages good stewardship and it helps make liability concerns a much lesser issue. One of the proponents of LB160 was the Volunteer Firefighters Association. And when I can have an opportunity to speak in favor of them, I like to do that. And would ask the body just to think for a moment of where we may be were it not for the volunteer firefighters and what they are willing to give of their time and efforts in order to protect us. And so with that, I thank you and give full support to the bill and its amendments. [LB160]

SENATOR LANGEMEIER: Thank you, Senator Carlson. Senator Louden, you are recognized, followed by Senator Pahls. [LB160]

SENATOR LOUDEN: Yes, thank you, Mr. President, members of the body. I just wanted to make a short statement in support of this bill. Some of you probably haven't been around long enough to remember, but I can remember when some of the first equipment that these EMTs and people like that, rescue people, had was equipment that was donated. There would be different kind of fund drives for people to donate money. And at the time, equipment would be donated for these. In fact, I think the first

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oxygen that the ambulance had in the city of Alliance was donated by a lady that, her husband was picked up by them and she could see the need of it. So she personally wrote the check out for oxygen equipment. Now it's been a long time back when you talk about oxygen equipment being the major equipment in an ambulance. But at one time, that was about the size of it. That was something. And so as time goes on and we work farther in, I think we should be able to take these donations like this. And I certainly support the bill. Thank you, Mr. President. [LB160]

SENATOR LANGEMEIER: Thank you, Senator Louden. Senator Pahls, you are recognized. [LB160]

SENATOR PAHLS: Mr. President, members of the body, I have a personal story about faulty equipment. Many years ago, my dad was a fireman, volunteer fireman, and they had old equipment. And he almost died in a fire because of poor equipment. So you can see I have some emotional value to a bill such as this. Thank you. [LB160]

SENATOR LANGEMEIER: Thank you, Senator Pahls. Senator Wallman, you are recognized. [LB160]

SENATOR WALLMAN: Thank you, Mr. President and members of the body. I, too, think this is a good bill and thank the people that brought it forth and our volunteers in rural Nebraska. They do a tremendous job. I have, like Adams, Clatonia, you know, they take care of us on the farm. And some of my friends have had bad accidents and they've been right there. And so anything we can do to help those EMTs and rural firemen and all, let's do it. Thank you, Mr. President. [LB160]

SENATOR LANGEMEIER: Thank you, Senator Wallman. Is there anyone else wishing to speak to AM503? Seeing no lights on, Senator Friend, you are recognized to close on the committee amendments, AM503. [LB160]

SENATOR FRIEND: Thank you, Mr. President, members of the Legislature. Just to remind you again, AM503 amends one of the sections to give a little better definition of the term "person" and elaborates a little more in regard to that subject matter. Mr. President, that's all I'd have. I'd ask for the adoption of AM503. Thank you. [LB160]

SENATOR LANGEMEIER: Thank you, Senator Friend. You have heard the closing on the adoption of AM503. The question before the body is, shall AM503, the committee amendments, be adopted to LB160? All those in favor vote yea; all those opposed vote nay. Has everyone voted that wishes to? Record, Mr. Clerk. [LB160]

CLERK: 38 ayes, 0 nays, Mr. President, on adoption of committee amendments. [LB160]

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SENATOR LANGEMEIER: Committee amendments are adopted. We return now to discussion on LB160. Is there anyone wishing to speak to the bill? Seeing no lights on, Senator Cornett, you are recognized to close on LB160. [LB160]

SENATOR CORNETT: Thank you, Mr. President and members of the body. I wanted to thank you for your consideration on this matter and I urge you to support the passage of LB160. It is a bill that will help support our smaller fire departments and our rural fire departments who so desperately need equipment. Thank you very much. [LB160]

SENATOR LANGEMEIER: Thank you, Senator Cornett. You have heard the closing on the advancement of LB160. The question before the body is, shall LB160 advance to E&R Initial? All those in favor vote aye; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB160]

CLERK: 36 ayes, 0 nays, Mr. President, on the advancement of LB160. [LB160]

SENATOR LANGEMEIER: LB160 does advance. (Visitors introduced.) Mr. Clerk, next item on the agenda, LB578. [LB160 LB578]

CLERK: LB578, Mr. President, offered by Senator McDonald. (Read title of LB578.) The bill was introduced on January 17 of this year, at that time referred to the General Affairs Committee. The bill was advanced to General File. There are committee amendments pending by General Affairs. (AM573, Legislative Journal page 800.) [LB578]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator McDonald, you are recognized to open on LB578. [LB578]

SENATOR McDONALD: Mr. President, members of the body, LB578 as originally drafted is a nonsubstantive technical cleanup bill that the committee has decided to use for another technical noncontroversial purpose. Since the committee amendment replaces the original language of LB578, I will describe the contents when I open on the committee amendment. Thank you. [LB578]

SENATOR LANGEMEIER: Thank you, Senator McDonald. As the Clerk has stated, there are amendments from the Government Affairs Committee. Senator McDonald, as Chair of that committee, you are recognized to open. [LB578]

SENATOR McDONALD: Mr. President, members of the body, that would be the General Affairs Committee. Thank you. [LB578]

SENATOR LANGEMEIER: So noted. [LB578]

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SENATOR McDONALD: AM573 deletes the original contents of LB578 and replaces it with a request we received from the Liquor Control Commission to help them process electronic tax filings more efficiently. Last year, the Legislature granted the Liquor Control Commission the authority to accept excise tax filings electronically. In the process of setting up this ability, the commission director found a way to make the new system run more efficiently and also found that the statutory authority was needed to do it. The committee amendment creates new language stating that when the Liquor Control Commission finds that the administration of the state alcohol excise tax laws might be more efficiently conducted, the commission may require or allow rounding off amounts on returns or reports to the nearest whole dollar. This is the practice the Department of Revenue exercises. And in fact, the language mirrors the Department of Revenue statute on tax reports and returns. To be clear, the reason for the bill is it will be more economical and cost-effective relative to processing state excise tax returns linking to beer, wine, and spirits. The commission has a project in process to create electronic filing of monthly tax reports and EFT revenues received. The rounding to the nearest dollar will reduce the development costs of the automation program. There is no fiscal impact expected on excise revenues. However, a cost savings on implementation of electronic filing is anticipated. You might ask, why is there no fiscal impact? What happens to the rounded off amounts that are due? By being able to round up and down, the numbers will likely break even. There is no revenue lost. And in fact, because of switching to electronic filing, the commission will be able to process the taxes three days faster than now, meaning that the state will get the benefit of three extra days a month on interest that the commission collects annually, which amounts to \$27 million. The tax receipts will be received about three days ahead of time and also streamlines the process the commission used to collect taxes. It's not allowed in state statutes at this point in time and we hope to change that with AM573 and then LB578 in the bill. Thank you. [LB578]

SENATOR LANGEMEIER: Thank you, Senator McDonald. You have heard the opening for the committee amendment, AM573, from General Affairs Committee. The floor is now open for discussion. Is there anyone wishing to speak to the bill? Seeing no lights on, Senator McDonald, you are recognized to close. She waives closing. The question before the body is, shall AM573, offered by the General Affairs Committee, be adopted? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB578]

CLERK: 27 ayes, 0 nays, Mr. President, on adoption of committee amendments.
[LB578]

SENATOR LANGEMEIER: The committee amendments are adopted. The floor is now open for discussion on LB578, the bill itself. Is there anyone wishing to speak to the bill? Seeing no lights on, Senator McDonald, you are recognized to close. Senator McDonald waives closing. The question before the body is, shall LB578 advance to E&R Initial? All

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those in favor vote yea; all those opposed vote nay. Has everyone voted that wishes to? Record, Mr. Clerk. [LB578]

CLERK: 27 ayes, 0 nays, Mr. President, on the advancement of LB578. [LB578]

SENATOR LANGEMEIER: LB578 does advance. Mr. Clerk, next item on the agenda, LB681. [LB578 LB681]

CLERK: Mr. President, LB681 was a bill introduced by Senator Pedersen. (Read title of LB681.) The bill was introduced on January 17 of this year, referred to the Transportation and Telecommunications Committee for public hearing. The bill was advance to General File. At this time, I have no amendments to the bill. [LB681]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Pedersen, you are recognized to open on LB681. [LB681]

SENATOR PEDERSEN: Thank you, Mr. President, members of the Legislature. LB681 increases the Motor Vehicle Industry Licensing Board's discretionary license fee authority for all types of licenses which it currently issues. The types of licenses we are talking about are listed on page 2 or 3 of this bill. They include dealer's licenses, salesperson's licenses, manufacturer's licenses, distributor's licenses, factory representative's licenses, finance company licenses, auction dealer's licenses, wrecker or salvage dealer's licenses, among others. These fees have not been increased in the last 25 years. And as you know, the costs associated with owning an automobile have increased substantially during that period of time, as have the costs of running a business. Last year for the first time in the history of Motor Vehicle Licensing Board, their expenditures exceeded their income, prompting them to raise the fee for a motor vehicle dealer's license to the maximum fee allowable. For example, the motor vehicle dealer's license rose from \$175 to \$200. Let me emphasize that although this bill sets maximum fees for the licenses that are twice that which was put into law over 25 years ago, it does not automatically increase any fees. It simply raises the maximum fee ceiling that can be charged if necessary for the board to pay the expenses of carrying out all of the statutory duties outlined for the Motor Vehicle Industry Licensing Board. If the board continues its conservative stewardship, these fees should not have to be raised for at least another 25 years. Another important aspect of this bill is the provision which increases the corporate surety bond required to obtain and maintain a motor vehicle dealer's license, a trailer dealer's license, or a motorcycle dealer's license. The current bond is set at \$25,000. LB681 raises that bond to \$50,000. This bond is proved to protect persons who have been defrauded by a motor vehicle dealer. Anyone who has purchased a vehicle in the past few years knows that \$25,000 would rarely cover the cost of one vehicle, let alone that of several that might have been sold by an unscrupulous dealer. Raising the amount of the bond to \$50,000 provides at least some measure of protection to our citizens. The bill is supported by the Motor Vehicle Industry

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Licensing Board, the Nebraska New and Used Truck Dealers Association, and the Nebraska Independent Auto Dealers Association. There was no opposition to the bill at the hearing, no votes against forwarding the bill to the Legislature, and the committee decided it was important enough to be named as one of the committee's two priority bills. I urge you to forward LB681 to Select File. Thank you. [LB681]

SENATOR LANGEMEIER: Thank you, Senator Pedersen. You have heard the opening on LB681. The floor is now open for discussion. Is there anyone wishing to speak to LB681? Seeing no lights on, Senator Pedersen, you're recognized to close. Senator Pedersen waives closing. The question before the body is, shall LB681 advance to E&R Initial? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB681]

CLERK: 29 ayes, 2 nays, Mr. President, on the advancement of LB681. [LB681]

SENATOR LANGEMEIER: LB681 does advance. Mr. Clerk, next item on the agenda, LB106. [LB681 LB106]

CLERK: LB106 is a bill by Senator Engel. (Read title of LB106.) The bill was introduced on January 5 of this year, Mr. President, referred to the Revenue Committee for public hearing. The bill has been advanced to General File and there are Revenue Committee amendments pending. (AM365, Legislative Journal page 638.) [LB106]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Engel, you are recognized to open on LB106. [LB106]

SENATOR ENGEL: Mr. President, members of the body, as introduced, LB106 changes the method used to impose an excise tax on snuff, which is commonly referred to as moist smokeless tobacco, or MST. The current tax on MST is 20 percent of the wholesale price. Under LB106, the tax would be set at 50 cents per ounce with fractional parts of an ounce taxed proportionately at the same rate. Products weighing less than one ounce would be taxed at a minimum of one ounce. The committee amendments expand the bill's provision to apply to all tobacco products, which include all tobacco items primarily intended for chewing. And the method of taxing smoking tobacco would not be changed. The committee amendments also increase the tax for tobacco products from 50 cents per ounce as proposed in the original bill to 65 cents per ounce. Although I do not endorse the use of tobacco products, I do support a fair tax system. As you know, cigarettes are taxed by the pack yet smokeless tobacco is taxed on an ad valorem basis. This method gives an unfair tax advantage to the less expensive brands which are growing at a faster pace than name-brand products. Therefore, although this lower quality product is less expensive, it is also artificially cheaper due to the way we tax the product. For example, some cans of snuff are sold for 49 cents, meaning that the excise tax is just a couple of pennies. Compare this to a

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name-brand can of snuff selling for more than \$4 with an excise tax of approximately 60 cents. The generic brand product sells for less than the amount of the excise tax on the name-brand product. Again, like I say, this is an equity issue. However, the harm caused by unit tobacco is essentially unrelated to its price as all tiers of smokeless tobacco contain virtually the same amount of nicotine. A \$6 can of premium smokeless tobacco does no greater harm to the user or to society than a \$2 brand of generic smokeless tobacco. But under the current system, the premium brand can be charged a tax three times or more than that of the generic brand. Much of the effect of this ad valorem tax is merely to encourage more consumption of the inexpensive brand. An added advantage of the tax change would be that the 49 cent cans of snuff may not be as tempting to our young adults as the tax pushes the price to over a dollar. While all states collect excise taxes on products such as gasoline, beer, wine, spirits, and cigarettes, all of these taxes are imposed on a unit or volume basis; a gallon of gas, a liter of wine, a barrel of beer, or a pack of cigarettes. Smokeless tobacco, however, is one of the few products that are subject to an ad valorem excise tax or a tax based on price, which is on the wholesale price. Excise taxes, unlike sales taxes, are intended to tax consumption. I urge you to consider the merits of taxing tobacco products by weight, which to me is a much fairer method as its taxes are based on consumption, not on an arbitrary price. I'd appreciate your support. I know there are committee amendments and this did come out of committee unanimously. Thank you. [LB106]

SENATOR LANGEMEIER: Thank you, Senator Engel. As the Clerk has stated, there are amendments from the Revenue Committee. Senator Janssen, as Chair of the Revenue Committee, you are recognized to open on the committee amendments. [LB106]

SENATOR JANSSEN: Thank you, Senator Langemeier, members of the Legislature. Senator Engel did a fine job in opening on his bill and did touch on the committee amendments. But the committee amendments to LB106 replace the bill with a more general and universal policy. The committee amendments divide the current tobacco products into two groups; the first called "other smoking tobacco." And the amendment is tobacco that is not usually marketed or packaged by weight, as usually intended for smoking tobacco. Under the committee version, these products would continue to be taxed at 20 percent of the wholesale price. The other group, which is what we call the chewing tobacco, which retains the name of tobacco products, are usually sold by weight and includes all kinds of chewing tobacco. These products would be taxed at 65 cents per ounce, up from the 50 cents per ounce that was in the original bill. The original bill would have taxed only some of these products by weight. So the committee amendment is designed to treat all similar products in a similar way. And that's the intent of the committee amendments. [LB106]

SENATOR LANGEMEIER: Thank you, Senator Janssen. You have heard the opening on the committee amendments, AM365. The floor is now open for discussion. Wishing

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to speak, we have Senator Preister, Kruse, and Chambers. Senator Preister, you are recognized. [LB106]

SENATOR PREISTER: Thank you, Honorable President, friends all. I rise in support of the committee amendment and also of the bill itself. I may be doing it for different reasons than the introducer of the bill, but I think this creates a fairer system and particularly for a lot of young people who are able to get access to a 49 cent can of snuff and begin using the product. And unfortunately, in Nebraska we have a very high rate of tobacco usage by young people of smokeless tobacco. This would increase and change from the ad valorem tax which could be--as Senator Engel said and he described it, I think, very well--a matter of just a few cents to creating the same amount of tax, essentially 65 cents, on each can. So it would create a more fair, a more equitable taxing system. Each can, no matter its price, would have that same excise tax upon it. It would effectively cause the price of those very low brands to increase at least by that amount. And in the committee, we did hear some stories of some of the marketing practices that enhanced that low entry-level cost. And so as those products become very inexpensive, it's very attractive for young people and it's also attractive for people to essentially buy some of the cheaper brands. So part of it is marketing. I'm not here supporting or dealing with the marketing as it affects the industry or the sellers of the product. I'm here supporting it because I think it's a good tax policy. But it's good because I think it prevents, or helps to create a fairness in the price that affects young people buying it and getting hooked on these tobacco products. For those reasons, I support the Revenue Committee amendment as well as LB106. Thank you. [LB106]

SENATOR LANGEMEIER: Thank you, Senator Preister. Senator Kruse, you are recognized. [LB106]

SENATOR KRUSE: Mr. President and colleagues, thank you. Would Senator Engel yield? [LB106]

SENATOR LANGEMEIER: Senator Engel, would you yield to a question? [LB106]

SENATOR ENGEL: Yes, I will. [LB106]

SENATOR KRUSE: Senator Engel, is snuff barred from use on this floor or can it be used here? [LB106]

SENATOR ENGEL: Well, I imagine that's something you could conceal on your person and nobody would know the difference if you're good at it. [LB106]

SENATOR KRUSE: There's no law against using it here on the floor? [LB106]

SENATOR ENGEL: I don't think so. I don't know. [LB106]

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SENATOR KRUSE: Is there anything tucked within this bill or any anticipated amendments that would bar the use of snuff on this floor? [LB106]

SENATOR ENGEL: No. [LB106]

SENATOR KRUSE: Good. I appreciate that support of personal freedom, which is very valuable to me. And therefore I will support the bill. Thank you. [LB106]

SENATOR LANGEMEIER: Thank you, Senator Kruse. Senator Chambers, you are recognized. [LB106]

SENATOR CHAMBERS: Mr. President, members of the Legislature, without intending to use a pun, I may want to snuff this bill out. But prior to launching into that effort, to get some discussion, I want to divide the question. So may...is Senator Janssen available, and Senator Engel and I approach the bench and... [LB106]

SENATOR LANGEMEIER: Yes. [LB106]

SENATOR CHAMBERS: ...speak with your honor? [LB106]

SENATOR LANGEMEIER: Please do. Senator Chambers, Janssen, and Engel, please come to the front for a moment. [LB106]

SENATOR CHAMBERS: Thank you. [LB106]

SENATOR LANGEMEIER: The Chair has ruled that the motion to divide will stand. We will divide it into three sections and the Clerk will advise us momentarily on those three divisions. Mr. Clerk. [LB106]

CLERK: Mr. President, pursuant to the division, there will be three components to the committee amendments. The first component will consist of Sections 1 through 5 of the original committee amendment, Sections 7 through 11 of the original committee amendment, and Section 13. That's the first component. The second component will be Section 6 of the committee amendment, of the original committee amendment. And the third and final component will be Section 12 of the original committee amendment. We'll make those available just as soon as we can, Mr. President. [LB106]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Janssen, as Chair of the Revenue Committee, would you...you're recognized to open on the first section of the division, 1 through 5, Sections 7 through 11, and Section 13. (FA40, Legislative Journal pages 878-881.) [LB106]

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SENATOR JANSSEN: Well, the first division defines the products and sets out the...defines the products in Section 4, that would be, where smoking means cigars, cheroots, stogies, a name that I can't pronounce, periques, granulated, plugs, crimp cut, rubbed, tobacco suitable for smoking except that smoking tobacco does not mean cigarettes as defined in Section 77-2601. You go into Section 5, we're talking about snuff flour, whatever that is, cavendish, plugs or twist tobacco, and it also, it takes out then tobacco or smoking in a pipe or otherwise chewing and smoking. And then it leaves in the plug or twist tobacco. And in...okay, that takes care of the first section. The second section would be 7 through 11 and that starts on page 4 of the amendment. That defines smoking tobacco and that, of course, smoking tobacco is not being changed in this. Let's see. That is what...on page 5, line 17, it says for tobacco products, such return shall be included the net weight as listed by the manufacturer. And that, let's see. Okay, on page 6, we have tobacco...on line 3, invoices of tobacco products and smoking tobacco. And on line 6, for tobacco products, such returns shall also include the net weight as listed in the manufacturer. And on line 19, other tobacco products and smoking tobacco, is underlined. And on line 27, smoking tobacco is listed on that. And on page 7, line 15, smoking tobacco is added on to that. Have I explained that clear enough for you? I believe that's the way the division works. [LB106]

SENATOR LANGEMEIER: Thank you, Senator Janssen. You have heard the opening on the first component of the divided committee amendments, which include Sections 1 through 5, 7 through 11, and Section 13 of the committee amendment. The floor is now open for discussion. Senator Chambers, you are recognized. [LB106]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, this is education time. I doubt that the Legislature has ever really been informed on what all is entailed in dealing with tobacco products. And although that term is going to be given a definition, I'd like to get a little bit of help this morning from some of those who supported this bill. I don't see Senator White, he's on that committee. Is Senator Raikes...(Laugh) I guess if Senator Ashford was...well, I'll just wait. Senator Langemeier is in the chair. I'm trying to find somebody I can put, not in the chair, but in the hot seat. Senator Dierks, is Senator Dierks here? (Laughter) I'd like to ask Senator Dierks a question or two since he's on that committee and voted to send this bill to us. [LB106]

SENATOR LANGEMEIER: Senator Dierks, would you yield to a question? [LB106]

SENATOR DIERKS: I will try. [LB106]

SENATOR CHAMBERS: Thank you. Senator Dierks, I just want to let Senator Janssen know that before we're finished, I may refer to him as "Captain Queeg" because "Captain Bligh" has already been taken. Senator Dierks, how many divisions exist now with reference to products made from tobacco... [LB106]

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SENATOR DIERKS: I don't know. [LB106]

SENATOR CHAMBERS: ...if this amendment is adopted? [LB106]

SENATOR DIERKS: Three. [LB106]

SENATOR CHAMBERS: And what are they, for our enlightenment and edification? [LB106]

SENATOR DIERKS: I'm sorry, but I just walked in the floor, Senator. I don't know for sure what you did. [LB106]

SENATOR CHAMBERS: Who said three? Did you say three? [LB106]

SENATOR DIERKS: I said three. [LB106]

SENATOR CHAMBERS: Okay, but you're not sure which three they are? [LB106]

SENATOR DIERKS: No. [LB106]

SENATOR CHAMBERS: Okay, thank you. I will ask Senator Preister because he has been here. Oh, Senator Preister has bailed out. (Laughter) I'd like to ask Senator Cornett a question or two, if I may. [LB106]

SENATOR LANGEMEIER: Senator Cornett, would you yield to a question? Sorry. [LB106]

SENATOR CHAMBERS: I would like to ask "Captain Queeg," alias Senator Janssen, a question or two if I may, then. [LB106]

SENATOR LANGEMEIER: Senator Janssen, would you yield to a question? [LB106]

SENATOR JANSSEN: (Raspy voice) Yes. (Laughter) [LB106]

SENATOR CHAMBERS: It's interesting how, when these bills come up, that I have a question or two, the only one left is the "Captain." Senator Janssen, how many divisions are there among those products created or manufactured from tobacco? And no coaching. [LB106]

SENATOR JANSSEN: There are two, plus cigarettes. [LB106]

SENATOR CHAMBERS: So how many? [LB106]

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SENATOR JANSSEN: That's three. [LB106]

SENATOR CHAMBERS: Okay. And what are the other two? [LB106]

SENATOR JANSSEN: Well, there is the cigarettes... [LB106]

SENATOR CHAMBERS: That's one. [LB106]

SENATOR JANSSEN: And cigars... [LB106]

SENATOR CHAMBERS: Well, that's in one of the...okay. [LB106]

SENATOR JANSSEN: Well, and then... [LB106]

SENATOR CHAMBERS: I want the broad categories. You don't have to break down each item that's in the other two categories. What would the other two categories be? [LB106]

SENATOR JANSSEN: Well, there are two. There are actually two, really, one that you smoke the tobacco and the other one where you put it in your mouth and chew it. [LB106]

SENATOR CHAMBERS: And what are those categories called, based on the amendment that we're looking at today? Is this your amendment? [LB106]

SENATOR JANSSEN: One would be smoking tobacco, the other one chewing tobacco. [LB106]

SENATOR CHAMBERS: Well, I don't think so. [LB106]

SENATOR JANSSEN: Okay. Other tobacco products, and smoking tobacco. That would cover all tobacco products. [LB106]

SENATOR CHAMBERS: So we have tobacco products. [LB106]

SENATOR JANSSEN: Yes. [LB106]

SENATOR CHAMBERS: We have smoking tobacco. [LB106]

SENATOR JANSSEN: Right. [LB106]

SENATOR CHAMBERS: And we have cigarettes. [LB106]

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SENATOR JANSSEN: Yes, yeah. [LB106]

SENATOR CHAMBERS: Okay. You're right when you give that as the answer. [LB106]

SENATOR JANSSEN: No, that's right. [LB106]

SENATOR CHAMBERS: Those are the three separate parts. [LB106]

SENATOR JANSSEN: Right, um-hum. [LB106]

SENATOR CHAMBERS: Now if you will turn to page 2 of the committee amendment... [LB106]

SENATOR LANGEMEIER: One minute. [LB106]

SENATOR CHAMBERS: Are you with me? [LB106]

SENATOR JANSSEN: Yeah. I just pushed my light on so we wouldn't run out of time here. [LB106]

SENATOR CHAMBERS: Senator Janssen, beginning in line 14, we're talking this morning about tobacco products... [LB106]

SENATOR JANSSEN: Um-hum. [LB106]

SENATOR CHAMBERS: ...and what that term will mean. [LB106]

SENATOR JANSSEN: Okay. [LB106]

SENATOR CHAMBERS: It no longer will mean cigars. It will no longer include cheroots or stogies or...what's this number four, p-e-r-i-q-u-e-s? [LB106]

SENATOR JANSSEN: I don't know what it is. I don't know how to say it, let alone know what it is. [LB106]

SENATOR CHAMBERS: Could that be a fugitive from justice, as far as you know? [LB106]

SENATOR JANSSEN: Well, probably all tobacco products are a fugitive from justice. (Laugh) [LB106]

SENATOR CHAMBERS: Okay. And the granulated, plug cut, crimp cut... [LB106]

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SENATOR JANSSEN: You missed ready rubbed and I don't know what that is either. [LB106]

SENATOR CHAMBERS: No, that's next. [LB106]

SENATOR JANSSEN: Oh, okay. [LB106]

SENATOR CHAMBERS: Ready rubbed and other smoking tobacco. All of those things are eliminated from... [LB106]

SENATOR LANGEMEIER: Time. [LB106]

SENATOR CHAMBERS: ...the term "tobacco products." Thank you, Mr. President. [LB106]

SENATOR LANGEMEIER: Thank you, Senator Chambers. Your light is on next. You're re-recognized. [LB106]

SENATOR CHAMBERS: Thank you, Mr. President. Now we'll continue, Senator Janssen, because we're going to find out the new meaning, I presume, of what "tobacco products" means. But before I do that, if you drop down to line 21, are you with me? [LB106]

SENATOR JANSSEN: I'm with you. [LB106]

SENATOR CHAMBERS: This will also be, this list will also be excluded. Smoking in a pipe... [LB106]

SENATOR JANSSEN: Right. [LB106]

SENATOR CHAMBERS: ...or otherwise. What's the otherwise? If you're not going to smoke it in a pipe or in cigarette paper, how else are you going to smoke it? [LB106]

SENATOR JANSSEN: You know, Senator Chambers, I really, really don't know what that means. [LB106]

SENATOR CHAMBERS: Okay, so we'll proceed because you're getting rid of it anyway. [LB106]

SENATOR JANSSEN: Yes. [LB106]

SENATOR CHAMBERS: Or for chewing and smoking. Those are eliminated. [LB106]

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SENATOR JANSSEN: Yes. [LB106]

SENATOR CHAMBERS: Then we say tobacco products does not mean cigarettes. You agree? [LB106]

SENATOR JANSSEN: Right. Oh, by the way, Senator Chambers, I found out what the word is that I can't pronounce, what it means, if you'd like me to tell you that. [LB106]

SENATOR CHAMBERS: Yes, I would like that. [LB106]

SENATOR JANSSEN: This word (laugh) means pipe tobacco... [LB106]

SENATOR CHAMBERS: What word? [LB106]

SENATOR JANSSEN: P-e-r-i-q-u-e-s. [LB106]

SENATOR CHAMBERS: (Laugh) I thought you were going to tell me how to pronounce it. [LB106]

SENATOR JANSSEN: No. [LB106]

SENATOR CHAMBERS: Okay. [LB106]

SENATOR JANSSEN: I'll tell you what it means. It means pipe tobacco, kind of tobacco with medium-sized leaves, small stems, tough and gummy fiber, raised in Louisiana. That's why we can't pronounce the name. [LB106]

SENATOR CHAMBERS: Okay. [LB106]

SENATOR JANSSEN: And cured in its own juice so as to be very dark colored, usually black. [LB106]

SENATOR CHAMBERS: Is it liquid when you use it? Is it wet when you use it or is it dry? [LB106]

SENATOR JANSSEN: Got a few more things here. [LB106]

SENATOR CHAMBERS: Okay. [LB106]

SENATOR JANSSEN: They add to that. All right, what it means is granulated... [LB106]

SENATOR CHAMBERS: Okay. [LB106]

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SENATOR JANSSEN: ...plug cut, a hard package of chewing tobacco, crimp cut, ready rubbed, and pipe tobacco. [LB106]

SENATOR CHAMBERS: What is ready rubbed, ready rubbed, what is that? [LB106]

SENATOR JANSSEN: I don't know. [LB106]

SENATOR CHAMBERS: How do you do it? [LB106]

SENATOR JANSSEN: (Laugh) I don't know what it is. That's just the category. [LB106]

SENATOR CHAMBERS: Who does it? [LB106]

SENATOR JANSSEN: I would imagine there are people that use it. I have no idea what ready rubbed means. I know what the crimp cut means. [LB106]

SENATOR CHAMBERS: Can all of these products be used by a consumer to either smoke or chew? [LB106]

SENATOR JANSSEN: Right. [LB106]

SENATOR CHAMBERS: All right. [LB106]

SENATOR JANSSEN: The only one, as far as I know, the only one you could smoke in that list would be pipe tobacco. The rest of them... [LB106]

SENATOR CHAMBERS: Now in line, if you come to line 19, shorts... [LB106]

SENATOR JANSSEN: All right, are we still on page 2? [LB106]

SENATOR CHAMBERS: Yes. [LB106]

SENATOR JANSSEN: Okay. [LB106]

SENATOR CHAMBERS: What are shorts? (Laughter) [LB106]

SENATOR JANSSEN: Now that's an open question. That's a loaded question, Senator. [LB106]

SENATOR CHAMBERS: But it's in your bill. So what do you mean when you put shorts? [LB106]

SENATOR JANSSEN: Well, there used to be a product that was raised, we used to

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feed it to swine and they called that shorts. [LB106]

SENATOR CHAMBERS: Have you ever heard that sometimes breath comes in short pants? [LB106]

SENATOR JANSSEN: What, what was that? [LB106]

SENATOR CHAMBERS: Somebody's breath may come in short pants. [LB106]

SENATOR JANSSEN: In short pants, yes. [LB106]

SENATOR CHAMBERS: Okay. Now here's what I'm interested in... [LB106]

SENATOR JANSSEN: Before we're through, Senator Chambers, I may be in shorts also, in short pants. [LB106]

SENATOR CHAMBERS: Now we have this listing and I want you to tell me what they're used for. Refuse scraps, clippings, cuttings, and sweepings... [LB106]

SENATOR LANGEMEIER: One minute. [LB106]

SENATOR CHAMBERS: ...are these things used and put in some form and sold to the public for either smoking or whatever other use would be made of it? [LB106]

SENATOR JANSSEN: Apparently they are. [LB106]

SENATOR CHAMBERS: Does the product label have to point out that this product consists of sweepings and refuse? [LB106]

SENATOR JANSSEN: I'm not sure of that. [LB106]

SENATOR CHAMBERS: If we eliminated that, would it hurt your bill? [LB106]

SENATOR JANSSEN: (Laugh) I don't know whether it would or not. I believe the definition should be in there. Now I am at odds on what some of those things mean. But apparently when the statutes were written on tobacco, it was necessary for them to be in there. [LB106]

SENATOR CHAMBERS: Well, when you get to line 21, well, line 20... [LB106]

SENATOR JANSSEN: Twenty, okay. [LB106]

SENATOR CHAMBERS: ..."other kinds and forms of tobacco, prepared in such manner

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as to be suitable for chewing." [LB106]

SENATOR JANSSEN: Right. [LB106]

SENATOR LANGEMEIER: Time. [LB106]

SENATOR CHAMBERS: Thank you, Mr. President. [LB106]

SENATOR LANGEMEIER: Thank you, Senator Chambers. Senator Janssen, you are recognized to continue. [LB106]

SENATOR JANSSEN: We can continue, Senator Chambers. [LB106]

SENATOR CHAMBERS: Are these items that we mentioned designed for chewing? And that's what I wanted to ultimately get to. [LB106]

SENATOR JANSSEN: Yes. [LB106]

SENATOR CHAMBERS: Will these items find their way into chewing tobacco? [LB106]

SENATOR JANSSEN: Yes. [LB106]

SENATOR CHAMBERS: Sweepings and refuse scraps, does that mean that these are the leavings from the tobacco leaf which is used for some other higher purpose? [LB106]

SENATOR JANSSEN: Apparently, yes. I would assume that that is what it's for, yes. [LB106]

SENATOR CHAMBERS: So they try to do with tobacco what some livestock people might try to do with a carcass. Whatever is high on the hog, then what gets lower on the hog, then you get to the hoof, the tail, the snout, and all those other things. So they're, to the extent possible, going to make use of every part of that plant. [LB106]

SENATOR JANSSEN: Yes, it... [LB106]

SENATOR CHAMBERS: And since these things we're talking about will no longer be a part of the smoking tobacco category... [LB106]

SENATOR JANSSEN: Well, yes, they would, because I believe pipe tobacco is in there; isn't it? No, except that tobacco products shall not mean cigarettes...yes, I believe pipe tobacco is in there. [LB106]

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SENATOR CHAMBERS: No, they're striking out pipe. [LB106]

SENATOR JANSSEN: Well, let's see. [LB106]

SENATOR CHAMBERS: In line 21, they strike out smoking in a pipe. [LB106]

SENATOR JANSSEN: Yes, yes. [LB106]

SENATOR CHAMBERS: So all that we deal with here are portions of the plant which would be used for chewing. [LB106]

SENATOR JANSSEN: Yes. [LB106]

SENATOR CHAMBERS: All of these different things will wind up in snuff. Where is snuff mentioned in here, since we're talking about tobacco products and snuff seems to be what they're concerned about? [LB106]

SENATOR JANSSEN: Well, in line 17... [LB106]

SENATOR CHAMBERS: Okay, I see it. [LB106]

SENATOR JANSSEN: ...snuff flour. I believe, Senator, if you remember some history, how the colonial people, they would have these little snuff cans and they'd (sniffing noises) breathe that stuff. [LB106]

SENATOR CHAMBERS: Yeah, I was there. They used to do that in the senate in the early days and they had a spittoon. [LB106]

SENATOR JANSSEN: Well, all right, that's what, I think, snuff means. [LB106]

SENATOR CHAMBERS: And this is what the bill is really about, isn't it? [LB106]

SENATOR JANSSEN: Yes. [LB106]

SENATOR CHAMBERS: This that we're talking about now. And currently, this product and these items that have been mentioned, will they all be covered by other provisions of this bill which change the way they are taxed? [LB106]

SENATOR JANSSEN: Yes. [LB106]

SENATOR CHAMBERS: And they will be taxed not on the basis of the ad valorem standard, which would say anytime the manufacturer's price increases, the tax on these products would increase automatically. That's the way it would be now. [LB106]

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SENATOR JANSSEN: That's the way it is now, yeah. [LB106]

SENATOR CHAMBERS: And under this bill, that will be done away with and you would tax these products... [LB106]

SENATOR JANSSEN: By weight. [LB106]

SENATOR CHAMBERS: ...based on their weight. [LB106]

SENATOR JANSSEN: That's correct. [LB106]

SENATOR CHAMBERS: And the weight, if you're calculating it on the basis of small units, it would be 50 cents per ounce or anything less than an ounce. [LB106]

SENATOR JANSSEN: Yes. [LB106]

SENATOR CHAMBERS: Senator Preister persuaded the committee to raise that 50 cents to 65 cents per ounce if the committee amendment would be adopted. [LB106]

SENATOR JANSSEN: That's what the amendment does, yes. [LB106]

SENATOR CHAMBERS: So then sweepings will now be 65 cents per ounce taxed... [LB106]

SENATOR JANSSEN: With the amendment, yes. [LB106]

SENATOR LANGEMEIER: One minute. [LB106]

SENATOR CHAMBERS: ...if you're going to sell it to anybody. [LB106]

SENATOR JANSSEN: Yes. [LB106]

SENATOR CHAMBERS: So these products could be sold in the form we're talking about here; clippings, whatever clippings are. If these clippings are sold, they must be taxed at 65 cents per ounce or less. [LB106]

SENATOR JANSSEN: Under the amendment, right. [LB106]

SENATOR CHAMBERS: Sweepings, cuttings, and any of these other things that are sold. All right, how badly do you want this bill? [LB106]

SENATOR JANSSEN: Well, it's not my bill, Senator Chambers. [LB106]

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SENATOR CHAMBERS: Well, you sent it out here and you voted for it. [LB106]

SENATOR JANSSEN: It is Senator Engel's bill. We... [LB106]

SENATOR CHAMBERS: But you voted for it. [LB106]

SENATOR JANSSEN: Yes, yes. [LB106]

SENATOR CHAMBERS: Are you going to deny it now? [LB106]

SENATOR JANSSEN: Oh no, no. No, I voted for the bill to come out of committee. [LB106]

SENATOR CHAMBERS: So how badly do you want this bill or don't you really care? [LB106]

SENATOR JANSSEN: Well, for one thing, Senator Chambers, it does raise some revenue. [LB106]

SENATOR CHAMBERS: How badly do you want this bill? [LB106]

SENATOR JANSSEN: Well, I think it's important. [LB106]

SENATOR CHAMBERS: I say again, how badly do you want this bill? [LB106]

SENATOR LANGEMEIER: Time. (Laughter) Thank you, Senator Janssen. Senator Chambers, your light is on, you are recognized. [LB106]

SENATOR CHAMBERS: Thank you, Mr. President. [LB106]

SENATOR LANGEMEIER: And this is your third time. [LB106]

SENATOR CHAMBERS: Senator Janssen... [LB106]

SENATOR JANSSEN: Yes? [LB106]

SENATOR CHAMBERS: ...how badly do you want this bill? Is it of any great consequence to you, in other words? [LB106]

SENATOR JANSSEN: Well, in the revenue standpoint, yes, I believe it is. It will raise the price of these tobacco products and make it a little, you know, a little harder for young... [LB106]

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SENATOR CHAMBERS: How much revenue will be raised? [LB106]

SENATOR JANSSEN: About \$1 million. [LB106]

SENATOR CHAMBERS: And that's not going to be, that amount is not going to always come in or will it always be at least that much coming in? [LB106]

SENATOR JANSSEN: Well, as long as people...if people continue consuming tobacco, these products, at the rate they are now, that's what it will bring in, yes. If they stop using it, it will decrease. [LB106]

SENATOR CHAMBERS: If the tax is higher, obviously the ones who produce these products think that this approach is going to cause them to be taxed at a lower rate than the ad valorem system, otherwise they wouldn't be in favor of it. Isn't that true? [LB106]

SENATOR JANSSEN: Well, I would imagine that you could look at it that way, yes. [LB106]

SENATOR CHAMBERS: So then ad valorem is going to bring us more money as a state, isn't it? [LB106]

SENATOR JANSSEN: That's what it is now, it's ad valorem, yeah. [LB106]

SENATOR CHAMBERS: Right. So why mess with a good thing? If the ones who are the dispensers and purveyors of these products want to go to a different method of taxation, they are not going to that method because they want to pay higher taxes. They feel, in the long run, they're going to gain from this. Isn't that true? [LB106]

SENATOR JANSSEN: Senator Chambers, the tobacco companies are not going to make any more money. The state will... [LB106]

SENATOR CHAMBERS: Who wants this bill? [LB106]

SENATOR JANSSEN: ...because the tobacco, the tobacco is sold to a wholesaler and then the tax is added on to that. [LB106]

SENATOR CHAMBERS: Senator Janssen, currently the ad valorem system is used to tax these products that we're talking about, correct? [LB106]

SENATOR JANSSEN: That's what we have now. [LB106]

SENATOR CHAMBERS: Snuff and the rest. [LB106]

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SENATOR JANSSEN: Yeah, yeah. [LB106]

SENATOR CHAMBERS: And the ones who produce these products are the ones who want this bill. Isn't that true? [LB106]

SENATOR JANSSEN: Well, I think it's a fairness issue. [LB106]

SENATOR CHAMBERS: That's not what I'm asking you. Does UST... [LB106]

SENATOR JANSSEN: Well, yes. [LB106]

SENATOR CHAMBERS: ...want this bill? [LB106]

SENATOR JANSSEN: Who? [LB106]

SENATOR CHAMBERS: UST. They testified before your committee and you don't even know who they are? [LB106]

SENATOR JANSSEN: United States Tobacco? Oh, UST... [LB106]

SENATOR CHAMBERS: Were they...they're under an alias? [LB106]

SENATOR JANSSEN: That's the United States Tobacco Company, yes. [LB106]

SENATOR CHAMBERS: They want this bill. [LB106]

SENATOR JANSSEN: Yes. [LB106]

SENATOR CHAMBERS: Well, why would they want a bill if it's going to make them pay higher taxes? [LB106]

SENATOR JANSSEN: Well, they're not going to be paying any higher taxes. The people that buy them will pay higher taxes. [LB106]

SENATOR CHAMBERS: That's why they want this bill? They want to increase the price of their product and that will make people buy more of the product? [LB106]

SENATOR JANSSEN: Well, what they really want is to have all tobacco products priced the same way. [LB106]

SENATOR CHAMBERS: No, you said... [LB106]

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SENATOR JANSSEN: Not by ad valorem, but by weight. [LB106]

SENATOR CHAMBERS: You said it will increase the price of their product to the one who purchases it, the consumer. Is that what you said? [LB106]

SENATOR JANSSEN: Certainly. [LB106]

SENATOR CHAMBERS: Have you ever heard the petroleum industry come in here and support an increase on the price of gas at the pump? [LB106]

SENATOR JANSSEN: No. [LB106]

SENATOR CHAMBERS: They're always opposed to it because it's going to reduce the amount... [LB106]

SENATOR JANSSEN: They're always opposed to it. [LB106]

SENATOR CHAMBERS: ...of gas they sell. [LB106]

SENATOR JANSSEN: That's right. [LB106]

SENATOR CHAMBERS: So you're saying this industry is different and they favor a higher tax on their product to the consumer. Is the consumer going to buy more when they have to pay a higher tax? [LB106]

SENATOR JANSSEN: Hopefully they don't buy as much. [LB106]

SENATOR CHAMBERS: Then I need to save them from themselves. This is a bad bill, even for the United States Tobacco Company. They don't realize what's happening to them so I think we ought to kill this bill and help everybody and leave well enough alone. Has the state ever experienced any problem because the ad valorem system of taxation is utilized when it comes to what they call... [LB106]

SENATOR LANGEMEIER: One minute. [LB106]

SENATOR CHAMBERS: ...moist snuff? The state hasn't had a problem with that, has it? [LB106]

SENATOR JANSSEN: No, I guess not. But... [LB106]

SENATOR CHAMBERS: Well, has the state ever brought a bill to do what we're doing here? [LB106]

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SENATOR JANSSEN: This would bring in more revenue. [LB106]

SENATOR CHAMBERS: But the state has not asked anybody to introduce this bill, is that true? [LB106]

SENATOR JANSSEN: Well, no, I don't imagine...no. [LB106]

SENATOR CHAMBERS: Who requested that this bill be introduced? [LB106]

SENATOR JANSSEN: I don't know. You'd have to ask Senator Engel that. [LB106]

SENATOR CHAMBERS: Thank you. I will ask Senator Engel a question, Mr. President, before my time expires. [LB106]

SENATOR LANGEMEIER: Senator Engel, will you yield to a question? Twenty seconds. [LB106]

SENATOR ENGEL: Yes, I will. What was the question again? [LB106]

SENATOR CHAMBERS: Senator Engel, who requested that this bill be introduced? [LB106]

SENATOR ENGEL: This came from out in the lobby. But I'll tell you where it originated, back at ALEC last summer, we have an economic development and commerce committee task force. And out of that task force is where this came about. They drafted some model legislation. And that's where I got the idea. [LB106]

SENATOR LANGEMEIER: Time. [LB106]

SENATOR CHAMBERS: Thank you, Mr. President. [LB106]

SENATOR LANGEMEIER: Thank you, Senator Chambers. Senator Engel, your light is on next. [LB106]

SENATOR ENGEL: I just wanted to comment on a couple things, as far as the ad valorem tax bringing in more money. And the way I understand it, I think Senator Janssen mentioned that with this, by increasing the tax as far as weight rather than the ad valorem tax, it will bring in more money. And the projection, I believe there's a gentleman over there on the side who will probably explain some of this from our office here, our Fiscal Office, as far as what he projects it will bring in. And before, we figured about \$1 million a year. And with that increase in taxes, if we go up 65 cents, it will bring in more. Now the thing is, this will not last forever. I think the original projections were about 12 to 14 years, you'd see an increase. And then depends on the consumption,

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whether they're buying the high end or the low end, it could equalize. Well, cigarettes, the same darn thing. You've got a price per pack now and if people quit smoking, you're going to pay less. But if they continue smoking, you're going to get the same amount. If you want the same amount of money, you probably have to raise the tax. But that's down the road. So as far as that portion of it...and the reason, the one reason I presented this bill is equity issue and not because I favor any tobacco company over the other. I favor none of them because I just don't do anything to promote tobacco of any sort. But the thing is the equity issue, like on the 49 cent can, it's about 2 cents; on the \$4 can, it's 60-some cents now. And the thing is, if you start them off on a level playing field, whatever we do, it's by weight, then let the market prevail after that. And there will still always be the cheaper end and there will always be the higher end. I don't know how anybody chews any of it, personally. I tried it twice in my life and one time I got three blocks away from where I took it before I had to stop and get sick. So that's not the point. I'm not promoting it for any other reason than the, as far as I'm concerned, the equity portion of it. So with that, I would yield...Senator Chambers, would you like to get on me a little more? (Laughter) I'll give you the time. [LB106]

SENATOR LANGEMEIER: Two, forty. [LB106]

SENATOR CHAMBERS: Thank you, Mr. President. And I'll accept any time I can get because I want the record to be clear on what we're doing. And I'm going to plod and take it painstakingly. When Senator Engel mentions the term "equity," what does the Legislature care about equity between two sellers of poison? One sells strychnine, the other sells arsenic. And somebody says, well, I want the one who sells arsenic to have to charge as much as the one who sells strychnine, and neither one of them is of any value. You've got two guys standing here fighting. There is Jack the Ripper to my left. There is Attila the Hun to my right. And this Legislature is concerned about making sure they're in a fair fight? Why does the Legislature even get into the middle of something like this? I used to think ALEC, I used to call them smart-aleck. But I don't call them that anymore. (Laughter) Thank you. Thank you very much. This bill ought not pass. But I'll ask Senator Engel a question, since it's his. Senator Engel, I have an amendment prepared that would let the bill stay in the form that it is except will strike 65 cents as the tax rate and make it \$1.05 per ounce or any portion of an ounce. Would you support that, if I did that and then let your bill go? [LB106]

SENATOR ENGEL: I think we could do that, yes. [LB106]

SENATOR CHAMBERS: You will? [LB106]

SENATOR ENGEL: Now could I make a comment, being as it's my time? [LB106]

SENATOR CHAMBERS: It's your time. You certainly can. [LB106]

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SENATOR ENGEL: There's two other reasons for this. Also... [LB106]

SENATOR LANGEMEIER: One minute. [LB106]

SENATOR ENGEL: ...it's a...I consider it a deterrent, too. I think if you raise the price of whatever you raise the price of, it's going to keep these kids from trying, because 50 cents or so I can get started on it. And then secondly, it is revenue enhancing, at least for the 12, 14, or perhaps more years than that, when we talk to this young man over here on the side. So there's three reasons I did it, so...but the answer to your question is yes. [LB106]

SENATOR CHAMBERS: Thank you, Senator Engel. That's all I would have, Mr. President. Thank you. [LB106]

SENATOR LANGEMEIER: Thank you, Senator Engel. Senator Carlson, you are recognized. [LB106]

SENATOR CARLSON: Mr. President and members of the Legislature, I'd like to address a question to Senator Engel. [LB106]

SENATOR LANGEMEIER: Senator Engel, would you yield to a question from Senator Carlson? [LB106]

SENATOR ENGEL: Yes, I will, Senator Carlson. [LB106]

SENATOR CARLSON: Now I'm sifting through some things that I'm hearing this morning, and I've heard about fairness and I've heard about revenue and I've heard about cutting consumption. But again, Senator Engel, what is the real purpose of this bill? [LB106]

SENATOR ENGEL: I think I told you my ideas, the equity issue, the consumption issue, and the revenue issue, all three, all three of those. Primarily, I think I mentioned the equity and that's probably my primary concern, but the other two fall in place. [LB106]

SENATOR CARLSON: Okay. Thank you. I'd like to address a question to Senator Chambers. [LB106]

SENATOR LANGEMEIER: Senator Chambers, would you yield to a question? [LB106]

SENATOR CHAMBERS: Yes, I will. [LB106]

SENATOR CARLSON: Senator Chambers, depending on the purpose of a bill, if the purpose is to raise revenue, now you just suggested an amendment of \$1.05? [LB106]

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SENATOR CHAMBERS: Yes. [LB106]

SENATOR CARLSON: Why wouldn't we have it \$1.50... [LB106]

SENATOR CHAMBERS: I'll go with you. [LB106]

SENATOR CARLSON: ...or \$2.00? [LB106]

SENATOR CHAMBERS: Because all we're doing is transposing the 5 and the 0, so it's still what I want. We just got it in a different order. So I would support \$1.50. [LB106]

SENATOR CARLSON: Would you support \$2? [LB106]

SENATOR CHAMBERS: I would support \$5 and a penny, so we're still dealing with the same three digits. [LB106]

SENATOR CARLSON: Okay. If a purpose is to cut consumption, then \$2 or \$5 would also be a good figure to arrive at, wouldn't it? [LB106]

SENATOR CHAMBERS: Yes, and I would join you in any of those that you would have in mind. [LB106]

SENATOR CARLSON: Now one of the things, and I'm not trying to be funny here, but in arriving at something that is revenue-driven, to me, in the area of tobacco there's a fragile system. If we're going to raise revenue, Senator Chambers, if that's our purpose, and let's suppose that's your purpose and that's my purpose for these discussions, it's a fragile system because we want to raise it as high as we can and still have people buy. Is that correct? [LB106]

SENATOR CHAMBERS: Well, my intentions are mixed. But if it were only for the purpose of raising revenue, you're absolutely correct in the way you phrase that. [LB106]

SENATOR CARLSON: And so we...if our purpose is raising revenue, we have to be careful about how high we raise it, because we still want people to buy it and, therefore, our goal is not to cut consumption. [LB106]

SENATOR CHAMBERS: If the sole purpose is to raise revenue, you are correct. [LB106]

SENATOR CARLSON: Okay. Thank you. [LB106]

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SENATOR CHAMBERS: Okay. [LB106]

SENATOR CARLSON: And all this about asking questions, but if it has something to do with revenue, I don't quite understand why we don't just go even higher. Thank you. [LB106]

SENATOR LANGEMEIER: Thank you, Senator Carlson. Is there anyone else wishing to speak to the bill? Seeing no lights on, Senator Janssen, you are recognized to close on the first section of the divided committee amendment. [LB106]

SENATOR JANSSEN: Thank you, Senator Langemeier. It's just a definition. All we're doing here is the definition to harmonize the bill...or the committee amendments. Yeah. [LB106]

SENATOR LANGEMEIER: Thank you, Senator Janssen. You have heard the closing on the first component of the divided committee amendment. Question is, should that first component be adopted to LB106? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB106]

ASSISTANT CLERK: 30 ayes, 1 nay on the adoption of that component of the committee amendments, Mr. President. [LB106]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. The first component is adopted. Senator Janssen, you are recognized to open. (FA41, Legislative Journal page 881.) [LB106]

SENATOR JANSSEN: Thank you, Senator Langemeier. Members of the Legislature, the second division is Section 6, and it has to do with the tax rate. The amendment says the tax on tobacco products shall be at 65 cents per ounce and a proportionate rate...or proportionate tax at the like rate on all fractional parts of an ounce. Such tax shall be computed based on the net weight as listed by the manufacturer. Any product listed by the manufacturer as having a net weight of less than one ounce shall be taxed as if product had the net weight of one ounce. [LB106]

SENATOR LANGEMEIER: Thank you, Senator Janssen. You have heard the opening on the second component of the divided committee amendment, which is, in the committee amendment, is Section 6. The floor is now open for discussion on the second component of the committee amendment. Mr. Clerk, for a motion. [LB106]

CLERK: Mr. President, Senator Chambers would move to amend this component of the committee amendments and let me read it, Senator, so I...because we won't have it on the system just yet. Mr. President, Senator Chambers would move to amend the original Section 6 of the committee amendment, on page 3, line 3 of the original committee

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amendment, strike 65 and insert \$1.05. (FA43, Legislative Journal page 881.) [LB106]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Chambers, you are recognized to open on your amendment to the second component of the committee amendments. [LB106]

SENATOR CHAMBERS: Mr. President, members of the Legislature, contrary to what people might think, I'm not here to raise Hades this morning. I'm not here to raise Cain this morning. I'm here to raise revenue this morning, and with the adoption of this amendment we will raise revenue. Although I don't smoke tobacco, I don't chew tobacco, I have no use for it whatsoever, I'm not going to try to tax it out of existence. The power to tax is the power to destroy. That is not my intent. Senator Engel, during his and my recent exchange during a period of time that he yielded to me, said that he would support this amendment, which would raise the amount of tax on these chewing products to this amount--\$1.05 per ounce or any fraction of an ounce. So my amendment, if adopted, will create a set of circumstances where you will not have to listen to my, as it has been described by a kind, compassionate reporter, lilting voice on this bill. So if you want to raise revenue and you want to squelch any of the discussion that I would have on this bill, the adoption of this amendment will take care of that. I had intended to quarrel with the date provided in Section 12 as to when this bill will take effect. I was going to push it out into the far distant future as a means of derailing the bill's taking any effect. I had made a comment the other day which I think I need to explain, because some people were unaware and hadn't heard me explain it before. A new senator, was I calling myself the devil when I said something about the deal was made with the devil, I said I made the deal, then I said, no, the deal was made with this devil? Here's the point: There have been all kind of literary productions, theatrical productions, movie productions that had a play on the notion of an individual swapping, trading, selling, forfeiting his or her soul for something that would be given in exchange by the devil. In all of those productions, whether it was one that was to be sympathetic to the devil, who in my opinion has gotten a bad rap, or as a warning to people, the devil or the devil's representative always kept his word, always kept his end of the deal, and always delivered first. If you read The Tragical History of Doctor Faustus, or Faust or any other versions of that story, Christopher Marlowe may have written one of the best, and he was in his mid-twenties when he died, so that young man had some things going on in his head. He also made a comment that I think is great. Right now, brothers and sisters, friends, enemies and neutrals, I'm borrowing a technique from my friend Senator Friend, who is not here today. He will start by saying I'm going to leave my house and go to the grocery store. He says, so the first thing I did was I went to the front door and I turned the knob, but it seemed like it stuck, and you probably think I mean that the knob wouldn't turn and disengage, but really there was something sticky on the knob and I think probably one of my children had been in there trying to fix some waffles and syrup, got syrup on his little hands and stuck it on the door knob and now the knob is sticky and...but that's not what I want to talk about. Here's what I want to talk about. I've got to

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get to the store, so I open the door and naturally most houses have a storm door. Some have just an ordinary screen with a wooden frame. That's in the old days, when my grandfather was a young man, which he isn't anymore, obviously, because you can see that I'm getting up in age, so that's when he was young. But the metal and glass storm doors will have kind of a solid panel at the bottom and then at the top you have glass for the winter. Then in the summer you can remove that glass and put in a screen. So I had to open the screen door and as I stepped out on the porch, you probably think it might have been winter, didn't you; that I didn't shovel the snow and ice and I slipped on the ice and fell. Well, that's the way my good friend Senator Friend presents items, and I listen, I hang on every word that he says. The other day he said that one of the female senators told him he never makes his point, and then he immediately said, but I do have a point today, I think. (Laughter) I listen to him, made the mistake of listening. Now I'm addicted. I can't tune him out even when I want to. So I might ask Cindy, if I'm in the office, Cindy, will you turn down the sound, please, so I can get something done? But back to what I was going to say, when the devil makes the deal, he delivers. When I make a deal I'm going to abide by it, and the deal that Senator Engel and I struck was that this amount of tax would be raised to \$1.05. When that amendment is adopted I will not have anything further to say on the bill, unless somebody wants to ask me a question. I cannot vote for the bill because tobacco bills, gambling bills, liquor bills, unless it's going to do something about the tax, I'm not able to support them. I'm in a quandary on this one because it is raising a tax, but because the aim of all of this is to put snuff, chewing tobacco, and these other forms that are made use of other than by smoking, the intent is to create a bigger market for those products. I have to look at that intent. And although the increase in the tax that I'm offering may mitigate how much of a market will be created, I still cannot support the bill with a vote. But I'm sure it will have enough votes to move forward. Some will look at the revenue; some would have supported the bill in any case. So before I sit down, Mr. President, how much time do I have? [LB106]

SENATOR LANGEMEIER: Two, forty. [LB106]

SENATOR CHAMBERS: I would like to ask Senator Engel a question. [LB106]

SENATOR LANGEMEIER: Senator Engel, would you yield to a question? [LB106]

SENATOR ENGEL: Yes, Senator Chambers, yes. [LB106]

SENATOR CHAMBERS: Senator Engel, although I did it in kind of a circuitous manner, I was trying to say everything I could think of about what it is I'm offering. I don't want anybody to think it's a fast shuffle. Was I correctly representing what you and I have agreed on? [LB106]

SENATOR ENGEL: Exactly. [LB106]

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SENATOR CHAMBERS: I didn't understand you. [LB106]

SENATOR ENGEL: I said exactly, that's exactly what we talked about. [LB106]

SENATOR CHAMBERS: Thank you. Yes. And that's all I would have, Mr. President. Thank you. [LB106]

SENATOR LANGEMEIER: Thank you, Senator Chambers. You have heard the opening on FA43 to the second component of the committee amendments, FA41. Returning to discussion, Senator Engel, you're recognized. [LB106]

SENATOR ENGEL: Mr. President and members of the body, again, I would ask you to support this amendment that we agreed on and then support the bill. Thank you. [LB106]

SENATOR LANGEMEIER: Thank you, Senator Engel. Is there anyone else wishing to discuss FA43? Senator Nelson, you're recognized. [LB106]

SENATOR NELSON: Mr. President and members of the body, I'm at a bit of a loss on this amendment, on the bill itself, because I don't buy tobacco products as a matter of course and it's hard for me to differentiate some of these. I guess we're talking here about snuff or chewable smokeless products. May I direct a couple of questions to Senator Janssen? Is he present here? [LB106]

SENATOR LANGEMEIER: Senator Janssen, would you yield to a question? [LB106]

SENATOR JANSSEN: Yes. [LB106]

SENATOR NELSON: Senator Janssen, I believe you're in the grocery business? [LB106]

SENATOR JANSSEN: Yes. [LB106]

SENATOR NELSON: Okay. Do you sell these products? [LB106]

SENATOR JANSSEN: Yes. [LB106]

SENATOR NELSON: Could you give me some idea of the cost of...and I don't even know, snuff or whatever it's called, about what weight is the can that it comes in? [LB106]

SENATOR JANSSEN: Oh, what are...I think two ounces. I'm not sure. I believe it's

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about two ounces or somewhere in there. [LB106]

SENATOR NELSON: And I suppose there are higher priced types of moist tobacco and lower, but what ordinarily does a can...is there a range? Can you tell me the range of the cost of that product? [LB106]

SENATOR JANSSEN: Well, with this bill they would all be taxed the same. [LB106]

SENATOR NELSON: Yes, but does it cost \$5... [LB106]

SENATOR JANSSEN: (Inaudible) it could be (inaudible). [LB106]

SENATOR NELSON: ...\$5 to buy a can, or \$3, or just a general (inaudible)? [LB106]

SENATOR JANSSEN: Let's say, I would imagine around \$3, you know, I think. [LB106]

SENATOR NELSON: Three dollars for a can of snuff. [LB106]

SENATOR JANSSEN: I think. [LB106]

SENATOR NELSON: And so we're presently taxing them at 20 percent, so that would be 60, 60 cents tax on a \$3 can? [LB106]

SENATOR JANSSEN: Yeah. [LB106]

SENATOR NELSON: Okay. [LB106]

SENATOR JANSSEN: Pretty close. [LB106]

SENATOR NELSON: And now, because it's about two ounces, we're going to add \$2.10 if we pass this amendment. [LB106]

SENATOR JANSSEN: Yes. Yes. [LB106]

SENATOR NELSON: I'm a little concerned because I think you stated that this might raise about \$1 million. [LB106]

SENATOR JANSSEN: Uh-huh. [LB106]

SENATOR NELSON: I'm looking at the fiscal note and the impression I get there, and it says right here it cannot be readily determined to what extent or what duration there might be some extra revenue. In the long term, a weight-based method of taxation would certainly result in revenue loss. So how can we say that, you know, it's going to

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increase the taxes that we're going to receive by adding to the tax of this product?
[LB106]

SENATOR JANSSEN: I'm sorry. What was the question? [LB106]

SENATOR NELSON: The question was the fiscal note indicates that it's likely we aren't going to have any revenue gain at all if we raise the tax on this product. [LB106]

SENATOR JANSSEN: Oh, no. No, that was at 50 cents. [LB106]

SENATOR NELSON: All right, at 50 cents. [LB106]

SENATOR JANSSEN: Yeah. [LB106]

SENATOR NELSON: So now, since we've almost doubled that, or a little more, it's your impression that we would have a gain. [LB106]

SENATOR JANSSEN: Oh, absolutely. [LB106]

SENATOR NELSON: And that was probably based on the original version where the amendment was going to make it 65 cents. [LB106]

SENATOR JANSSEN: Right. [LB106]

SENATOR NELSON: All right. Thank you very much. [LB106]

SENATOR JANSSEN: Sure. [LB106]

SENATOR NELSON: I...you know, I appreciate that information. I think there are a lot of things that we need to consider further here and at this point I don't see how I could support either the amendment or the bill. Thank you, Mr. President. [LB106]

SENATOR LANGEMEIER: Thank you, Senator Nelson. Senator Wallman, you're recognized. [LB106]

SENATOR WALLMAN: Thank you, Mr. President, members of the body. What are we going to do, ban smoking? So we start chewing. Isn't that ironic, up the tax on the cheaper stuff to lower the tax on the higher priced stuff? You know, I don't...you know, if it isn't broke, don't fix it, I guess. And sometimes we try to make too many laws, but it seems ironic to me that we're doing this now, and it's for more revenue, make no mistake about it. So the way it's set up now I guess...I don't chew tobacco, I don't smoke tobacco, but I have friends that do both, so we're going to affect somebody here. We always seem to. (Laugh) So I guess I can't support either one, either. Thank you, Mr.

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President. [LB106]

SENATOR LANGEMEIER: Thank you, Senator Wallman. Is there anyone else wishing to speak to FA43? Seeing no lights on, Senator Chambers, you are recognized to close on FA43. Senator Chambers waives closing. The question before the body is, shall FA43 be adopted to the second component of the committee amendments, FA41? All those in favor vote aye; all those opposed vote nay. Senator Howard, your call light is on. Has everyone voted that wishes to? Senator Janssen, for what purpose do you rise? [LB106]

SENATOR JANSSEN: I am asking for possibly a, let's see, what...never mind. (Laughter) [LB106]

SENATOR LANGEMEIER: You had that look in your eyes. Please record, Mr. Clerk. [LB106]

CLERK: 25 ayes, 3 nays, Mr. President, on the adoption of the amendment to the committee amendment. [LB106]

SENATOR LANGEMEIER: FA43 is adopted. We return now to discussion on...Mr. Clerk, for a motion. [LB106]

CLERK: Mr. President, Senator Hudkins would move to amend this component of the committee amendments. (FA44, Legislative Journal page 882.) [LB106]

SENATOR LANGEMEIER: Senator Hudkins, you are recognized to open on your amendment to the second component, FA41, with FA44. [LB106]

SENATOR HUDKINS: Thank you, Mr. President and members of the body. I want to throw this out for your consideration. The first bill on the agenda today was my priority bill, LB663. I bracketed that for a month so that we could perhaps find other sources of revenue. LB663 had to do with the Highway Trust Fund and the Highway Allocation Fund. We were taking part of the registration fees, 30 percent, and we were directing those from currently to the Highway Allocation Fund. The Highway Allocation Fund is divided equally between cities and counties, and must be used for roads. The way that it is done now, the registration fee from apportioned vehicles, in other words, commercial trucks, goes into the Highway Trust Fund, which is then divided by a formula, but it goes to the various taxing entities, including schools. There was thought on the floor yesterday that if I would take this money, this 30 percent, I would be taking money from schools. So there was some dissension. Instead, what my amendment would do is that after the funds...after the expenses are paid by the Tobacco Products Administration Cash Fund for any costs in running that program, any excess in those taxes would be sent, instead of to that same Tobacco Administration Fund and thence to the General

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Fund, perhaps, I would move that money instead, after their expenses, to the Highway Allocation Fund. We are always looking for ways to improve our roads. Roads are the lifeblood of our state. I think we have something like 10,000 miles of roads in this state: the interstate, the U.S. highways, the state highways. And including the gravel roads, that's probably another X thousands of miles. But it is important that we have good roads, well-maintained roads. We need the roads to get our farm-to-market products to market. We need good roads to have our school buses transport our children to schools, and everyone is spending every dime that they can, probably in several places. Since this would be new revenue, I have held the Tobacco Products Administration Fund harmless and anything in excess would be then sent to the Highway Allocation Fund. Is it a lot of money? Probably not. Two million dollars. Is it going to continue forever? Probably not. But this is one way that we would not have to take the money away from our schools. When I did the bill about the apportionable vehicles, I said in my opening statement that in my opinion the money that was devoted to the Highway Trust Fund and then to everybody else really wasn't the place for it. Apportioned vehicles, the money that is received from those registration fees should all go to roads. Well, that wasn't how it was done, and so this is what I'm doing, is trying to hold one fund harmless and any excess revenue would go to roads. Thank you, Mr. President. [LB106 LB663]

SENATOR LANGEMEIER: Thank you, Senator Hudkins. You have heard the opening on FA44, offered by Senator Hudkins to the second component of the divided committee amendment. The floor is now open for discussion. Senator Gay, you are recognized. [LB106]

SENATOR GAY: Thank you, Mr. President. I would urge your support of this. I think it's a good alternative, instead of the way I understood this is the money goes to the General Fund to be used for whatever. But I think this could help offset a need, a definite need that counties need that's a crucial piece of infrastructure. Yesterday we discussed briefly on Senator Hudkins' bill that it could affect some schools. Well, this could be a nice alternative to fund that and maybe reallocate how we...how I thought we should reallocate those other funds on her bill as we look at that into the future. So I, from what I've heard, I like this idea. At least we're putting the money to a definite positive cause and I will support this. Thank you. [LB106]

SENATOR LANGEMEIER: Thank you, Senator Gay. Senator Schimek, you're recognized. [LB106]

SENATOR SCHIMEK: Yes, thank you, Mr. President and members. Senator Janssen, may I ask you a question regarding this amendment? [LB106]

SENATOR LANGEMEIER: Senator Janssen, would you yield to a question? [LB106]

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SENATOR JANSSEN: Yes. [LB106]

SENATOR SCHIMEK: Thank you, Senator Janssen. I'm...I know we need to find a new way of putting money into roads in this state, I know that. And I know that the federal funding is going to be going down, state funding is going to be going down, and lots of places are going to not get probably the kind of roads they want or need unless we find another source of revenue. However, I'm not sure this is the right one, and I'm kind of wanting to know what you think about this particular amendment. [LB106]

SENATOR JANSSEN: Well, thank you, Senator Schimek. As a rule, most people don't really ask me that question, what I think. (Laugh) But, you know, I believe that we have never went this route before. We have always used the gasoline tax. Of course, the consumption of gasoline has went down... [LB106]

SENATOR SCHIMEK: Right. [LB106]

SENATOR JANSSEN: ...and that is the reason why we're not having the funds coming into the...coming into the Department of Roads anymore. [LB106]

SENATOR SCHIMEK: Well,... [LB106]

SENATOR JANSSEN: I hate for us to go venturing out somewhere else for funds. [LB106]

SENATOR SCHIMEK: And that's kind of my... [LB106]

SENATOR JANSSEN: Yeah. [LB106]

SENATOR SCHIMEK: ...gut reaction to it, because generally we've used tobacco taxes, not always, I mean we've used them for construction, a lot of things, but the tobacco monies that have come in from those lawsuits, for instance, we make sure they go to health issues. It seems to me that we ought to maintain that tradition. But what I want to ask you as a follow-up question is, does the Revenue Committee itself...have you given any discussion to this business of finding enough revenues for roads? [LB106]

SENATOR JANSSEN: Not necessarily, no. [LB106]

SENATOR SCHIMEK: Okay. [LB106]

SENATOR JANSSEN: No. But, Senator, we don't know whether this extra revenue is going to continue or go up. With the increase in that product you know what happens, and it's probably not all bad. Some people may say it, you know, is too expensive; I'm going to quit using that. And we may have the border bleeding effect to a certain extent.

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But still, I believe that the revenue will be pretty significant in... [LB106]

SENATOR SCHIMEK: Significantly? [LB106]

SENATOR JANSSEN: ...and some people may quit. [LB106]

SENATOR SCHIMEK: Give me an idea of...do you have any estimates at this point? [LB106]

SENATOR JANSSEN: Oh, well, we're looking around \$4 million to possibly \$5 million if consumption stays the same on... [LB106]

SENATOR SCHIMEK: At \$1.05. [LB106]

SENATOR JANSSEN: At this, yes. [LB106]

SENATOR SCHIMEK: At \$1.05 you're talking. [LB106]

SENATOR JANSSEN: Right. Uh-huh. [LB106]

SENATOR SCHIMEK: Okay. Well, I really do have mixed emotions. And thank you, Senator Janssen. Did you want another minute or another...did you want to respond once more? [LB106]

SENATOR JANSSEN: Well, yes. So, you know, if we were to dedicate this to roads, you know, it wouldn't be a stable...a stable item... [LB106]

SENATOR SCHIMEK: Right. [LB106]

SENATOR JANSSEN: ...to draw from. It could fluctuate too much and probably more severely than what the gasoline consumption has. [LB106]

SENATOR SCHIMEK: Well, and maybe at some point we're just going to have to confront... [LB106]

SENATOR LANGEMEIER: One minute. [LB106]

SENATOR SCHIMEK: ...the fact that we can't continue the road building at the pace that has done in the past, that we have to find other ways of transportation, we have to find other ways of conserving gas, we have to do all these kinds of things. But that's a whole...that's a whole huge discussion. But thank you. I'm not sure what I'm going to do on this, but I have real hesitation about just suddenly on the floor earmarking some money for a particular purpose without having had it really vetted by the Revenue

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Committee and really looking at the larger picture, if you will, of needs and wants. So I guess I'm talking myself into not voting for this amendment, even though I think Senator Hudkins has raised a significant issue and that we do need to be paying attention to it. And maybe in the long run we'll come back and say, yeah, this is the way to go, but for now I don't think I'm going to say that. Thank you. [LB106]

SENATOR LANGEMEIER: Thank you, Senator Schimek. Senator Fulton, you're recognized. [LB106]

SENATOR FULTON: Thank you, Mr. President, members of the Legislature. The...I'm trying to get a handle on how much money we're talking about here in revenue, and I think I might have gotten an answer, but I wonder if Senator Janssen might yield to a question. [LB106]

SENATOR LANGEMEIER: Senator Janssen, would you yield to a question? [LB106]

SENATOR JANSSEN: Yes. [LB106]

SENATOR FULTON: Okay, in our last...our last decision as a body, we moved the tax from 65 cents up to \$1.05 per ounce, and my curiosity or my question is, what is that increase, that 40-cent increase per ounce, approximately what does that mean in revenues to the state? Would you have a figure that you could share with us there, Senator? [LB106]

SENATOR JANSSEN: Well, I'll throw out a figure. You don't know what will...as we talked earlier with Senator Schimek, what the consumption, what will happen with the consumption of this, but it would be, I would say, \$4 million, \$4 million to \$5 million. [LB106]

SENATOR FULTON: Okay. That helps. So we're, just to put it in context for me and hopefully for the body, I think we're moving along and doing some things here, it's important that we have an idea what we're doing. We're talking about here about \$4 million to \$5 million. That puts us in the ball park and that's something that we can work with anyway? Okay. That's all I...thank you, Mr. President. [LB106]

SENATOR LANGEMEIER: Thank you, Senator Fulton. Senator Kopplin, you are recognized. [LB106]

SENATOR KOPPLIN: Thank you, Mr. President, colleagues. I'd like to ask Senator Janssen a question. [LB106]

SENATOR LANGEMEIER: Senator Janssen, would you yield to a question? [LB106]

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SENATOR JANSSEN: Yes. [LB106]

SENATOR KOPPLIN: Thank you, Senator Janssen. This is...this is a question I ought to know the answer of, but I don't, so I'm turning to you because I know you'll have it (laugh) maybe. [LB106]

SENATOR JANSSEN: Maybe. [LB106]

SENATOR KOPPLIN: The cigarette tax goes to fund a great deal of the 309 Committee's activities. Do these other taxes on these tobacco products go this same way, or not? [LB106]

SENATOR JANSSEN: No, they don't, Senator. [LB106]

SENATOR KOPPLIN: Okay. So this wouldn't have any effect on that. [LB106]

SENATOR JANSSEN: No. [LB106]

SENATOR KOPPLIN: So tell me again, where do these particular taxes go? [LB106]

SENATOR JANSSEN: They go to the General Fund, Senator. [LB106]

SENATOR KOPPLIN: Okay. All right. Thank you. [LB106]

SENATOR LANGEMEIER: Thank you, Senator Kopplin. (Visitors introduced.) We return back to discussion on FA44. Senator Engel, you are recognized. [LB106]

SENATOR ENGEL: Mr. President, I just have a question on the germaneness of this particular amendment. I'd like to get a decision from the Chair whether this amendment is germane to the bill. [LB106]

SENATOR LANGEMEIER: Thank you. I would ask at this time to recognize you to explain why you don't think it's germane. [LB106]

SENATOR ENGEL: Well, we're earmarking, we're raising some funds here, I realize that, and we're increasing the taxes on smokeless tobacco, etcetera, but really, as far as earmarking it for roads or anything else, I just kind of wonder if that is germane to this type of legislation, so. [LB106]

SENATOR LANGEMEIER: Thank you, Senator Engel. Senator Hudkins, you are recognized to a response to the germaneness of your amendment. [LB106]

SENATOR HUDKINS: Thank you, Mr. President. I do believe that this is a germane

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amendment because this is a money issue. We're just deciding where the new revenue will go. My amendment does not take anything away from the tobacco...whatever that name is, Tobacco Products Administration Cash Fund, and the money, the new money generated, would be devoted to the Highway Allocation Fund. So it is germane. It's not a different topic. It's all money. [LB106]

SPEAKER FLOOD PRESIDING [LB106]

SPEAKER FLOOD: After consideration of Senator Engel's comments regarding the germaneness of FA41 to FA44, it is the ruling of the Chair that Senator Hudkins' amendment is germane, pursuant to Rule 7, Section 3, subparagraph (d) of the Rules of the Nebraska Legislature. In this situation the money and the revenue is generated by the underlying bill, LB106. Senator Hudkins is merely redirecting those funds to a fund other than the General Fund for purposes of highway construction. The Chair, therefore, rules that the amendment is germane. Senator Engel, do you wish to challenge the Chair? [LB106]

SENATOR ENGEL: No, I'll accept the Chair's decision, even though I don't agree with it. But the thing is I do believe this is a revenue issue that probably should be handled through the appropriation process as far as dedicating funds to any certain area. And so, therefore, I still think it's really not that germane, but I do accept yours and we'll just have to work on the amendment here and see what happens to it. Thank you. [LB106]

SPEAKER FLOOD: Thank you, Senator Engel. We will return to floor discussion. Senator Chambers, you're recognized. [LB106]

SENATOR CHAMBERS: Mr. President, members of the Legislature, Senator Hudkins' proposed amendment draws me back into the discussion because now we're not talking about tobacco or the tax itself. An amendment was adopted which will bring additional revenue to the state. Senator Carlson and I had an exchange, and through that you could see that there would be various reasons for voting for against this bill. But if one of the reasons in having in the bill is to raise revenue, then an attempt can be made to do that, which I did. I didn't want the tax increased in order to go into the roads fund, either part of it. If, as one of my colleagues and I were discussing, there is a problem with roads, "piecemealing" is not the way to do it. This tax was voted on for political reasons, I'm sure, so that the bill can go forward. I stated that I wouldn't try to tax tobacco out of existence because that's not going to happen. Since the bill was going to move forward it was my feeling, and I argued it, that we ought to go ahead and get some money out of it, and that's what was done by adopting the amendment. We don't know how much money is going to be raised. There is a dispute about what Senator Hudkins wanted to do with LB663, because of its impact on various entities, but this is not the way, in my opinion, to address that kind of issue. Roads cannot become the overarching issue when it comes to money this session, because if that is going to be the case, maybe

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some people can talk to me about voting against some of these spending bills so there's more money for roads. The contractors and road builders want as much money as they can get. They would not mind building a road from the middle of somewhere to the middle of nowhere, as long as they get paid for it. We are the policymakers. Is this a good process for developing a policy? A tax increase has been voted. It was not presented by me as a means to raise money for the Roads Department or building roads. I think the money should go into the General Fund. Even though it's on a specific group of products, I view it as a general tax. I did not say raise the money even for the purpose of education or health-related programs. I wanted to raise the tax money on this product which I think society would be better off without. I, in other words, am opposed to Senator Hudkins' amendment, but I find no fault with her in offering it. In this Legislature, whenever you see an opportunity you have to jump at it, and if you fail, what have you lost? You didn't have anything anyway. If you buy the lottery ticket, you're not likely to win, but if you don't buy it, it's sure that you won't win it. That's how some people persuade themselves to spend themselves into a deep hole because I might win. [LB106 LB663]

SENATOR LANGEMEIER PRESIDING [LB106]

SENATOR LANGEMEIER: One minute. [LB106]

SENATOR CHAMBERS: Then they get so deep that the only way I can get out is to spend more. Then they get in deeper and they say, well, you know I got to spend some more because I might get that ticket. I don't fault her, nor would I fault anybody else for attempting something like this, but I will not support it. In this particular case, I don't think it's good policy. The purpose that she wants to divert the money to has nothing to do with the product being taxed, the reason there might be objection to it, namely, that it harms the health of the users. So we're not talking about an education program for people to wean them away from this product, not going into a healthcare program to provide medical...the possibility of medical assistance to those whose health will be damaged or destroyed by this, but to the roads. I don't think that ought to be done so I oppose her amendment. Thank you, Mr. President. [LB106]

SENATOR LANGEMEIER: Thank you, Senator Chambers. Senator Synowiecki, you're next. You're recognized. You're recognized. [LB106]

SENATOR SYNOWIECKI: Thank you, Senator Langemeier. Senator Hudkins, would you yield to a question or two on your amendment? [LB106]

SENATOR LANGEMEIER: Senator Hudkins, would you yield to a question? [LB106]

SENATOR HUDKINS: Yes. [LB106]

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SENATOR SYNOWIECKI: If I'm reading this correctly, anything collected in excess from the fiscal year 2006-2007 goes to this highway fund. Is that correct? [LB106]

SENATOR HUDKINS: Yes. [LB106]

SENATOR SYNOWIECKI: And this is ongoing, so in 2010 we revert back to the '06-07 fiscal year? [LB106]

SENATOR HUDKINS: That's the way it's written. [LB106]

SENATOR SYNOWIECKI: Yeah. [LB106]

SENATOR HUDKINS: But there's nothing that can't prevent us from going back in and changing it in the future if this tobacco fund needs more money. Our intent was to hold them harmless. [LB106]

SENATOR SYNOWIECKI: Okay. Okay, thank you. I think that needs to be pointed out that the tobacco revenue receipts of '06-07 is going to be the benchmark for this, and for whatever reasons if we dramatically increase revenue streams in this area, it will go to the highway fund. I agree with Senator Schimek. We're going to have to have a serious public policy debate and deliberations relative to what we're going to do for funding roads projects. I don't know if the appropriate venue for that is an amendment on a bill on the legislative floor. I don't think that's the appropriate venue for that type of discussion. We will need to undertake to have serious deliberations relative to roads fundings, and we're going to have to find appropriate avenues to fund our roads projects. But I don't know if an amendment on the floor of the Legislature is appropriate. Senator Chambers also mentioned...just by coincidence I met with the tobacco prevention individuals this morning and the lack of funding that they receive from the Legislature to undertake prevention activities and cessation activities for those that are unfortunately addicted to these products, if we're going to do any earmarking with the cigarette tax revenue, my kind of knee-jerk assumption, that if anything is deserving of an earmark from tobacco revenue that these tobacco prevention programs and cessation activities and programs would probably be a more logical earmark than towards a roads project. And again, this Legislature is going to have to confront the deficiencies in roads funding, and I don't know if this is an appropriate venue and I will not support the amendment. Thank you. [LB106]

SENATOR LANGEMEIER: Thank you, Senator Synowiecki. Senator Howard, you are recognized. [LB106]

SENATOR HOWARD: Thank you, Mr. President and members of the body. I would certainly agree with Senator Synowiecki that if funds that were generated through additional tax on this product were to be channeled into one particular area, I would say

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it would be to improve the cessation treatment that's available for individuals that are trying to break a habit that is clearly unhealthy. I would like to ask Senator Fischer if she would be willing to yield to a question. [LB106]

SENATOR LANGEMEIER: Senator Fischer, would you yield to a question? [LB106]

SENATOR FISCHER: Certainly. [LB106]

SENATOR HOWARD: Thank you. I know that your committee and you personally are very invested in the issue of roads and concerned about that, and I'd like to know, I'd like to have some information about what your committee is doing with this issue at present. [LB106]

SENATOR FISCHER: Thank you, Senator Howard. As you know, the state does have needs when it comes to roads. We've discussed on this floor before, when we debated LB305, about the concerns with revenue declining and where we were going to look to find new revenue. I do thank Senator Hudkins for introducing this amendment because I think this discussion is always vital. Our committee, we have a bill in committee currently with Senator Raikes to look at funding needs for the roads in this state. We've talked some, as a committee. I plan to introduce a resolution for a study on funding for the roads and the necessity that we have. As I said, I believe, and I know the majority of members on my committee believe, that it is vital that we address this. And as I said, I thank Senator Hudkins. I do agree with comments that have been made here, though, on the amendment, that this is a piecemeal approach and what we need to do as a committee and also as a body is look at an overall solution that will be sustainable, that will help us to continue our maintenance and our construction of our highway system here in the state, and to move forward on various projects, such as the freeway projects that have stalled in recent years. [LB106 LB305]

SENATOR HOWARD: Thank you, Senator Fischer. I am in agreement with you that this is an issue that deserves more than a piecemeal solution, and I appreciate your intent to look at this in the bigger picture. I would like to ask Senator Heidemann if he would yield. [LB106]

SENATOR LANGEMEIER: Senator Heidemann, would you yield to a question? [LB106]

SENATOR HEIDEMANN: Yes. [LB106]

SENATOR HOWARD: Thank you, Senator. For my continued information and possibly for the benefit of the newer members of the body, could you explain the general procedure for addressing issues such as this regarding funding? [LB106]

SENATOR HEIDEMANN: Well, normally, and actually even this year, even pertaining to

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this subject, Senator Hudkins has a bill that she introduced to the Legislature and it was a bill to take cigarette tax money into roads, such as we're trying right now, and it is introduced. It gets referenced to committee and actually, because that bill says to appropriate money, and usually any time you have a bill that says to appropriate money it's referenced to the Appropriations Committee, and then at that time we look at it, we have a public hearing on it, and we decide at that time if it's something that we want to go forward with. That's normal procedure. But what...and as the Chair says, as what we are doing right now, actually if she can get 25 votes that's also a procedure that we can...we can do. It's not something that I feel comfortable with, I will say that, but she has every right to do what she's doing right now. But usually... [LB106]

SENATOR LANGEMEIER: One minute. [LB106]

SENATOR HEIDEMANN: ...you go through a little bit longer procedure. [LB106]

SENATOR HOWARD: Thank you. Thank you, Senator Heidemann. While I appreciate Senator Hudkins' concern about this issue, and I think it certainly deserves our discussion and our time, it also deserves a focused effort to see what is the best way to address funding for roads. I think this body is very committed to doing a good job on the issues that come before it, and I thank you for the opportunity to do this further examination. I return the balance of my time. Thank you. [LB106]

SENATOR LANGEMEIER: Thank you, Senator Howard. Senator Fischer, you are recognized. [LB106]

SENATOR FISCHER: Thank you, Mr. President and members of the body. Once again, I responded to some comments and questions from Senator Howard, but I would like just to reiterate a few of those. Again, I thank Senator Hudkins for this amendment. I don't know if I will support the amendment at this point, and I think I explained that previously. The Transportation Committee and along with Revenue Committee and Appropriations Committee, we need to look at and consider, and consider thoughtfully, how we are going to address financing our highway needs in this state. With Senator Hudkins' amendment, the funds will all be going to the Highway Allocation Fund. That means it goes to our cities and our counties to be used for roads, and it's designated as such. Again, that's a...in my opinion, that would be a piecemeal approach. We need to look with concern about the highways in the state, not just those that are the responsibilities of the cities and the counties, and those entities, they have needs, I'm not denying that, but they are already receiving revenue. If we don't look at the needs of the highways that the state is responsible for we are not going to be able to fund projects. If you remember the priorities for the state highway systems in Nebraska, the first priority are the state highways, the second priority is the interstate system, and the third priority is the freeway express system. As I said before, many of you have come to me with your concerns that especially the freeway systems in your areas that you

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represent, they're not being completed, they're not...there's no construction even going on. I think, once again, I truly believe we need to be looking at getting funding and adequate funding and sustainable funding for our highways in this state. We will see no construction, no new construction. We will see no maintenance. We will be basically in a preservation mode that we see in many cities here, filling potholes, if we don't get some money, and a lot of money, into the Highway Trust Fund. That's a priority, and I know it's a priority for me and I know it's a priority for many of you in here. Because when we talk about highways in the state of Nebraska, we're talking about economic development, we're talking about commerce, we're talking about the needs of citizens, and not just moving their products but in their lives and being able to move in their lives across the state and get to doctors' appointments, and I can go on and on, on that. But I would ask you to please remember this amendment, remember this discussion, remember how the majority of people that are standing up and speaking on this issue are stressing the need for more money into roads, because this discussion is not over, and I hope you will keep that in mind because you will be hearing from me again on that. Thank you, Mr. President. [LB106]

SENATOR LANGEMEIER: Thank you, Senator Fischer. Senator Engel, you are recognized. [LB106]

SENATOR ENGEL: Mr. President, again, I'd like to raise my opposition to this particular amendment. I think the bill was ready to go through and I think it should go through, and we can discuss this, the situation. I do appreciate Senator Hudkins bringing this up because she has an agenda of her own and she needs to convince people, and that's fine. And I think we do have problems in the counties and cities, so I do appreciate that. I used to serve on a county board. But I would appreciate the...voting the amendment down and passing the bill, as presented, as agreed upon. And with that, I'd return...I'd like to give some of my time to Senator Harms. [LB106]

SENATOR LANGEMEIER: Senator Harms, four minutes. [LB106]

SENATOR HARMS: Thank you, Mr. President, colleagues. Senator Fischer, would you yield, please? [LB106]

SENATOR LANGEMEIER: Senator Fischer, would you yield to a question from Senator Harms? [LB106]

SENATOR FISCHER: Yes, I will. [LB106]

SENATOR HARMS: Senator Fischer, did I hear you right to say that your committee is going to be asking for a study to be done on highways? [LB106]

SENATOR FISCHER: As Chairman of the committee, I will be introducing a resolution

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for a study, yes. [LB106]

SENATOR HARMS: Okay, thank you. What I would really hope that we would do, there's more than just money involved here with the roads and finding a solution to the financial part of it. What we need to begin to look at in our road system is what are they...how do they determine their priorities; what elements and factors do they put in, in determining what roads are going to be built; and third, we need to address the issue of the fact that the commissioners on the road are only advisory. I don't know how many of you know that, that they're only there as an advisory capacity and the Roads can overrule whatever they want to do. And so what I am asking for as you do your study, hopefully you'll take these things into consideration and that we do a study that's more than just the financing side of it. Because I will tell you, I will be here next year and I will be ready to address that issue because I think it's an important issue, and in fairness for rural America, I think we need to address these issues. Not everything can be done in urban America, and my point here is that we need to have a fairer type of system that allows us to be able to develop economic development, to develop rural America, and right now it's almost impossible to have that accomplished. So thank you, Senator Fischer, and I hope you will take those under consideration. [LB106]

SENATOR LANGEMEIER: Thank you, Senator Harms and Senator Engel. Speaker Flood, you're recognized. [LB106]

SPEAKER FLOOD: Thank you, Mr. President, members. I want to take this opportunity to go through a few different items that pertain to not only today but next week in the Legislature. You will note on today's agenda that I have listed several different divisions, the Raikes division, Friend division, White division, and Preister division. I wanted to explain this on the agenda so that you understand the method that I'm using here. Divisions are obviously named after the introducer of the last bill in the division, and this division name is subject to change if the last bill in the division changes or is...or another bill is added to the same. Additional priority bills would only be added to the end of a division, so no one is going to be seeing an agenda that sticks a new priority bill in the middle of a division, but it would be put at the end. And new bills will never be placed in front of an existing bill and division. Divisions will not always be in the same order, so if you came to work this morning and you looked at the agenda and you said, well, I'm third down in the fourth division, that doesn't mean that we go through every division in order. These divisions allow me to put them in different places on any given schedule. The fact that your bill appears on the agenda today should be notice that you should be ready on any given day to debate and discuss your bill. For instance, the Raikes division is first now, but it may not be in two weeks, or next week. That said about the agenda, please contact me or Laurie in my office if you have any questions. The next topic I want to discuss, the death penalty debate. LB476, prioritized by Senator Chambers, will begin on Monday and we will be starting Monday at 9:00 a.m. instead of 10:00 a.m. That is a change, and the motion on adjournment will reflect that. Look

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forward to seeing everyone Monday for that discussion. With regard to scheduling, we will continue back at 10:00 a.m. on the first day back each week after next week, obviously subject to change, but you'll be notified in advance. Next week we will be in session during the morning only on Monday, Tuesday, and Wednesday. On Thursday we will remain in session through the noonhour and adjourn midafternoon. And I do have an e-mail coming out to each of you that explains all this. The week after next we will be going with all-day sessions and would ask you next week to work very hard in your committees to maximize the Executive Session time so that we can make sure bills are ready for the floor. Where are we at right now? We're at the forty-seventh day, with twenty-four days estimated to the budget discussion, and we have big issues yet to discuss--K-12 education, water, and taxes. So times have changed from early February. We have 102 priority bills and there's going to be some more discussion about how the schedule works, and it's designed each day to maximize our time. For that reason, I want to talk about bracket motions. We've seen a number of bracket motions this session. A bracket motion in early February is a lot different than a bracket motion in late March, April, or May, because we do have 102 priority bills. If you bracket a bill you need to know you run the risk of it never coming back up again. If your bill is up and I've set aside time for it, and you decide to bracket it on your own motion, or somebody else happens to be bracketing your bill, whether with or without your consent, you run the risk of never seeing that bill again this session. Proceed with caution. How will you get a bill back on? Well, if I'm inclined to put it back on, I'll want certain assurances from the introducer that things have been worked out and it's ready for passage. So proceed with caution. And I would also ask you to do your best work before your bill hits the floor. Check with other senators, find out what they think of it. Know who your opposition is but, more importantly, understand what their opposition is to your bill and do your best to compromise when possible. And if you do have a bill that's coming and it will require a lot of debate and there are a lot of people against it, certainly our senior member will probably let you know one way or the other if he has an opposition...any opposition to your bill. Please communicate that to me so that I know which direction you're going. And finally, with regard to this bill, I believe there are only a few lights on before Senator Hudkins' light comes up. I would ask that maybe we give her a chance to close, in hopes that she could use her opportunity to speak as her closing; use any additional time during the actual closing; vote on this amendment to FA44 and hopefully move this bill one way or the other this morning by noon. Thank you for listening so patiently. I'll be happy to answer any questions, Mr. President. [LB106]

SENATOR LANGEMEIER: Thank you, Speaker Flood. We return now to the discussion on FA44. Senator Harms, you are recognized. [LB106]

SENATOR HARMS: Thank you, Mr. President, colleagues. I would call for the question. [LB106]

SENATOR LANGEMEIER: Senator Harms, seeing the next light on is Senator Hudkins,

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for her closing, I'm going to not acknowledge your request. Senator Hudkins, I would recognize you to close on FA44. [LB106]

SENATOR HUDKINS: Thank you, Mr. President and members. We have had quite a discussion this morning, some of it relevant and perhaps some of it not. In my opinion, this is a way to raise money for roads, and we're going to get to a vote on this amendment and to the bill, with the amendment or without it, and I will support the Engel bill. Costs for roads have increased dramatically. The fuel that the equipment needs, the equipment itself, the price for steel and bridges, the price for cement, the price for asphalt, that expense has gone up dramatically. Have we provided any more money for roads? Well, no, not really. We talked about relevance of this particular tax going to roads. Well, what about the cigarette tax? If I remember correctly, when that was implemented a number of years ago a nickel out of each pack of cigarettes went to the Devaney Center. Was that an appropriate use of that money? Think about it. The apportionment tax, part of the apportionment tax, for trucks is now going to the Highway Trust Fund. Should that tax be going to schools? Should it be going to libraries? Should it be going to NRDs? It does. Because the Highway Trust Fund is divided between the state, the city, and the county, and then it is all divided further to go to all of the taxing entities. So part of your Highway Trust Fund doesn't have anything to do with roads and, in fact, you don't have to spend any of it for roads. You can use it in your General Fund. Every penny that goes into the Highway Allocation Fund, other than administration, of course, is used for roads. Should we un earmark some of the earmarks that we have made? Should we take away the funds from the apportionment fees from the Highway Trust Fund because, well, you don't want to earmark money to go to libraries or NRDs? Senator Fischer has a bill, LB305, that takes the money from leased vehicles and puts that in the Highway Trust Fund, because it goes everywhere. Senator Fischer, would you then agree to move this money? I want to put it in the allocation fund. Would you be supportive of it if it went to the Highway Allocation Fund...the Highway Trust Fund? And if not, why not? It's the same thing as your bill. Rhetorical question, you don't have to answer it. We...maybe we should, if you don't want to earmark this, there's probably other things that we don't want to earmark either. What I'm trying to do is to take new revenue that is coming into the state which, without this amendment, it goes to the General Fund. That's fine if that's what you want to do, but that money could also go to the Highway Allocation Fund. The cities and counties that want to improve their roads, want to build new roads, where do they get the money? Well, they get it from property taxes. Yeah, they get some from the Highway Trust Fund, theoretically, and they also get it from the Highway Allocation Fund. This is a method to use new revenue, holding everyone else harmless, to take care of a great need. Roads... [LB106 LB305]

SENATOR LANGEMEIER: One minute. [LB106]

SENATOR HUDKINS: Roads are important in the state of Nebraska. This is one way to

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take care of it. I would hope that you would think about this for as long as it's going to take you to push your green button so we can get on to the voting for the bill. Thank you, Mr. President. [LB106]

SENATOR LANGEMEIER: Thank you, Senator Hudkins. You have heard the closing on FA44, which amends the second component of the Revenue Committee bill. The motion before the body is, shall FA44 be adopted? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Senator Hudkins, for what purpose do you rise? [LB106]

SENATOR HUDKINS: I would ask for a call of the house, please. [LB106]

SENATOR LANGEMEIER: There has been a request to place the house under call. The question is, shall the house go under call? All those in favor vote yea; all those opposed vote nay. Record, Mr. Clerk. [LB106]

CLERK: 29 nays, 1 nay to place the house under call, Mr. President. [LB106]

SENATOR LANGEMEIER: The house is under call. Senators, please record your presence, and those senators outside the Chamber please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. (Visitors introduced.) Senator Stuthman, would you please check in? Senator Heidemann, please return to the Chamber. The house is under call. The house is under call. Senator Heidemann, please return to the Chamber. Senator Hudkins, Senator Heidemann is on his way up here. How do you wish to proceed? We'll do that while we're waiting. [LB106]

SENATOR HUDKINS: Roll call. [LB106]

SENATOR LANGEMEIER: Senator Hudkins has requested a roll call vote, and we will start that as soon as Senator Heidemann returns. All senators are present or accounted for. There's been a request for a roll call vote. The motion is should FA44 be adopted to the second component of the committee amendments, FA41? Mr. Clerk. [LB106]

CLERK: (Roll call vote taken, Legislative Journal page 882.) 6 ayes, 30 nays, Mr. President, on the amendment. [LB106]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. FA44 does not pass, is not adopted. With that, I raise the call. We return to discussion on the second component of the committee...divided committee amendments, FA41. Anyone wishing to speak to FA41? Seeing no lights on, Senator Janssen, you are recognized to waive...or, excuse me, you're recognized to close. I'm giving you advice here. You are recognized to close on FA41. (Laughter) [LB106]

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SENATOR JANSSEN: Now I believe that we have come to a compromise here on the committee amendments and we have the price at \$1.05 on the tobacco products, so that will be the tax on them now. With that, it's fine with me. Thank you. [LB106]

SENATOR LANGEMEIER: Thank you, Senator Janssen. You have heard the closing on the second component of the committee amendments, FA41. The question before the body is, shall FA41 be adopted to LB106? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB106]

CLERK: 29 ayes, 6 nays, Mr. President, on the adoption of this component of the committee amendments. [LB106]

SENATOR LANGEMEIER: FA41 is adopted. Mr. Clerk. [LB106]

CLERK: Mr. President, before the Legislature considers the third and final component, Banking Committee will have an Executive Session now underneath the south balcony. Mr. President, the third and final component consists of Section 12 of the original committee amendment. (FA42, Legislative Journal page 883.) [LB106]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Janssen, you are recognized to open on the third and final division of the committee amendment. [LB106]

SENATOR JANSSEN: The third division is the effective date and this act would become operative on October 1 of 2007. [LB106]

SENATOR LANGEMEIER: You have heard the opening on the third component of the divided committee amendment. The floor is now open for discussion. Is there anyone wishing to speak to the third component? Seeing no lights on, Senator Janssen, you are recognized to close on the third component. Senator Janssen waives closing on the third component, FA42. The question before the body is, shall FA42, the third component, be adopted to LB106? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB106]

CLERK: 37 ayes, 1 nay, Mr. President, on the adoption of the third and final component of the committee amendments. [LB106]

SENATOR LANGEMEIER: The amendment is adopted. We return back to discussion on the bill itself, LB106. Is there anyone wishing to speak to LB106? Seeing no lights on, Senator Engel, you are recognized... [LB106]

SENATOR ENGEL: Mr. President, members... [LB106]

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SENATOR LANGEMEIER: Yeah, Senator Engel, you are recognized to close on LB106. [LB106]

SENATOR ENGEL: Mr. President, members of the body, have certainly enjoyed the discussions this morning. I think everybody had a chance to speak their mind here and what they thought, and I'm very happy that we got the vote we had on the amendments, and I appreciate you voting the bill itself to Select File. And with that, thank you. [LB106]

SENATOR LANGEMEIER: Thank you, Senator Engel. You have heard the closing on LB106. The question before the body is, shall LB106 advance to E&R Initial? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB106]

CLERK: 31 ayes, 6 nays, Mr. President, on the advancement of LB106. [LB106]

SENATOR LANGEMEIER: LB106 does advance. Mr. Clerk, items for the record. [LB106]

CLERK: Mr. President, some items, if I may. Thank you. New resolutions: LR57 by Senator Dubas, and LR58 by Senator Synowiecki; both those will be laid over. New A bill. (Read LB343A and LB292A by title for the first time.) I have amendments to be printed: Senator Kopplin to LB639; Senator Wightman to LB502. Standing committee reports: Health and Human Services, chaired by Senator Johnson, reports LB610 to General File; Judiciary, chaired by Senator Ashford, reports LB449 to General File; and Natural Resources, chaired by Senator Louden, reports LB412 as indefinitely postponed. Communication from the Governor to the Clerk. (Read re LB296.) []

Your Committee on Enrollment and Review reports they've examined and engrossed LB34, LB136, LB143, LB203, LB223, LB255, LB349, LB374, LB441, LB441A, LB464, LB470, LB470A, LB497, LB537, and LB661; all of those reported correctly engrossed. An announcement: Revenue will have an Executive Session today at 1:30 in their normal hearing room; Executive Session of the Revenue Committee at 1:30. And Senator Pahls would like to add his name as a cointroducer to LB565, Mr. President. (Legislative Journal pages 883-887.) [LR57 LR58 LB343A LB292A LB639 LB502 LB610 LB449 LB412 LB296 LB34 LB136 LB143 LB203 LB223 LB255 LB349 LB374 LB441 LB441A LB464 LB470 LB470A LB497 LB537 LB661 LB565]

Priority motion: Senator Dubas would move to adjourn until Monday morning, March 19, at 9:00 a.m. []

SENATOR LANGEMEIER: Thank you, Mr. Clerk. The motion is to adjourn until Monday morning, March 19, at 9:00 a.m. All those in favor say aye. All those opposed say nay. We are adjourned. []

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